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Table of Contents

Emergency Rules Now in Effect.**Pages 4 to 9**

Agriculture, Trade and Consumer Protection:

Rules affecting ch. ATCP 10, relating to diseases of fish and farm-raised deer.

Commerce:

Licenses, Certifications, etc., Ch. Comm 5

Rules affecting ch. Comm 5, relating to licensing of elevator contractors and installers.

Amusement Rides, Ch. Comm 34

Rules creating s. Comm 34.22 (5m), relating to amusement ride safety.

Rules affecting ch. Comm 34, relating to amusement rides and affecting small businesses.

Financial Resources for Businesses and Communities, Chs. Comm 104—Rules creating ch. Comm 132, relating to implementing a program for certifying applicants and allocating dairy manufacturing facility investment tax credits, and affecting small businesses. **[First Appearance] EmR 0802**

Employment Relations Commission:

Rule affecting ch. ERC 10, relating to increased filing fees.

Health and Family Services:

Health, Chs. HFS 110—

Rule affecting ch. HFS 115, relating to including the condition known as Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the list of disorders and disorder types found in s. HFS 115.04.

Natural Resources:

Fish and Game, etc., Chs. NR 1—

Rules affecting chs. NR 19 and 20, relating to control of fish diseases and invasive species.

Environmental Protection—Water Regulation, Chs. NR 300—

Rules affecting chs. NR 320, 323, 328, 329, 341, 343, and 345, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

Environmental Protection—Air Pollution Control, Chs. NR 400—

Rules affecting ch. NR 462, relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business.

Public Instruction:

Rule affecting ch. PI 33, relating to grants for nursing services.

Rules affecting ch. PI 31, relating to grants for science, technology, engineering, and mathematics programs. **[First Appearance] EmR 0801**

Revenue:	<p>Rules affecting ch. Tax 2, relating to the computation of the apportionment fraction by multistate professional sports clubs.</p> <p>Rules affecting ch. Tax 8, relating to liquor wholesaler warehouse facilities.</p>
Transportation:	Rules affecting ch. Trans 178, relating to the unified carrier registration system.
Workforce Development:	<p><u>Family Supports, Chs. DWD 12 to 59</u> Rules affecting ch. DWD 56, relating to child care rates.</p> <p><u>Public Works Construction Contracts, Chs. DWD 290 to 294</u> Rules affecting chs. DWD 290 and 293, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements and affecting small businesses.</p>
Scope Statements.	
Commerce:	<p>Pages 10 to 13</p> <p>Rules affecting ch. Comm 131, relating to the diesel truck idling reduction grant program.</p> <p>Rules affecting ch. Comm 132, relating to the dairy manufacturing facility investment credit.</p>
Corrections:	<p>Rules amending s. DOC 332.19, relating to the annual sex offender registration fee.</p> <p>Rules creating s. DOC 332.20, establishing a reimbursement rate to offset the costs of monitoring persons subject to GPS tracking or passive positioning system tracking.</p> <p>Rules creating s. DOC 332.21, establishing a systematic and consistent process for determining if GPS tracking is appropriate for certain serious child sex offenders.</p>
Natural Resources:	Rules affecting ch. NR 47, relating to grant funding for catastrophic storm damage caused to urban forests.
Public Defender Board:	Rules affecting chs. PD 2, 3, and 6, relating to representation by the State Public Defender of persons subject to involuntary administration of psychotropic medication without a pre–determination of financial eligibility.
Submittal of Rules to Legislative Council Clearinghouse.	
Commerce:	Ch. Comm 156, relating to a grant program for rehabilitation and recycling of manufactured housing, and affecting small business. CR 08–008
Health and Family Services:	Ch. HFS 115, relating to the addition of Severe Combined Immunodeficiency and related conditions to the list of congenital and metabolic disorders for which newborns are screened. CR 08–005
Insurance:	Ch. Ins 17, relating to fund fees and mediation panel fees for fiscal year 2009. CR 08–006

Public Instruction:	Ch. PI 31, relating to grants for science, technology, engineering and mathematics programs. CR 08-007
Workforce Development:	Ch. DWD 56, relating to child care rates and affecting small businesses. CR 08-009
Rule-Making Notices.	Pages 16 to 22
Commerce:	Hearing to consider rules affecting ch. Comm 156, relating to establishing a grant program for rehabilitation and recycling of manufactured housing, and affecting small business. CR 08-008
Health and Family Services:	Hearing to consider rules affecting ch. HFS 115, relating to screening newborns for Severe Combined Immuno-deficiency and related conditions of immuno-deficiency. CR 08-005
Insurance:	Hearing to consider rules affecting ch. Ins 17, relating to fund fees and mediation panel fees for fiscal year 2009 and affecting small business. CR 08-006
Workforce Development:	Hearing to consider rules affecting ch. DWD 56, relating to child care rates and affecting small businesses. CR 08-009
Submittal of Proposed Rules to the Legislature.	Page 23
Commerce:	Ch. Comm 130, relating to the manufacturing investment credit. CR 07-101
Pharmacy Examining Board:	Ch. Phar 7, relating to prescription labels. CR 07-097 Ch. Phar 7, relating to the transfer of a prescription drug by a pharmacy technician. CR 07-099
Revenue:	Ch. Tax 8, relating to liquor wholesaler warehouse facilities. CR 07-109
Workforce Development:	Ch. DWD 55, relating to child care certification. CR 07-071
Rule Orders Filed with the Legislative Reference Bureau.	Page 24
Government Accountability Board:	Ch. EIBd 3, relating to election-day registration. CR 06-137
Marriage and Family Therapy, Professional Counseling and Social Work Examining Board:	Ch. MPSW 17, relating to training licenses for marriage and family therapists. CR 07-047 Chs. MPSW 10 and 11, relating to training licenses for professional counselors. CR 07-048
Veterans Affairs:	Ch. VA 2, relating to the tuition reimbursement program. CR 07-083

Emergency Rules Now in Effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule–making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule–making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

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

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

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR 0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.

Agriculture, Trade and Consumer Protection

Rules adopted revising **ch. ATCP 10**, relating to diseases of fish and farm–raised deer.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including programs to control diseases of fish and farm–raised deer.

Disease Testing of Fish

(2) DATCP regulates fish farms, including fish farms operated by the Wisconsin Department of Natural Resources (“DNR”). DATCP also regulates the import, movement and disease testing of fish.

(3) Viral hemorrhagic septicemia (VHS) is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish

farms. VHS can be fatal to fish, but is not known to affect human beings.

(4) Current DATCP rules require health certificates for fish and fish eggs (*including bait*) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish and fish eggs (including bait species) moved between fish farms in this state. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources, for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between fish farms in Wisconsin, or for non–salmonids imported from states where VHS has not yet been found.

(5) Because VHS has now been found in waters of the state, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to adopt VHS testing requirements by emergency rule, pending the adoption of a “permanent” rule.

Disease–Free Herd Certification of Farm–Raised Deer Herds

(6) DATCP registers farm–raised deer herds in this state. DATCP also regulates the import, movement and disease testing of farm–raised deer. Under current DATCP rules, DATCP may certify a deer herd as brucellosis–free or tuberculosis–free, or both, based on herd test results provided by the deer keeper. Certification is voluntary, but facilitates sale and movement of deer.

(7) Under current rules, a tuberculosis–free herd certification is good for 3 years, but a brucellosis–free herd certification is good for only 2 years. There is no compelling veterinary medical reason for the difference. A rule change (extending the brucellosis–free certification term from 2 to 3 years) is needed to harmonize the certification terms, so that deer farmers can conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. An emergency rule is needed to avoid some unnecessary costs for deer farmers this year, pending the adoption of permanent rules.

Publication Date: October 31, 2007

Effective Date: October 31, 2007

Expiration Date: March 29, 2008

Hearing Date: January 14, 2008

Commerce

(Licenses, Certifications, etc., Ch. Comm 5)

Rules adopted revising **ch. Comm 5**, relating to licensing of elevator contractors and installers.

Exemption From Finding of Emergency

Under the nonstatutory provisions of 2005 Wis. Act 456, the Department of Commerce was directed to issue emergency rules that implement provisions of the Act. The Act specifically states: “Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of commerce is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the

preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection.”

The Act mandates the licensing of elevator contractors and installers. Under the Act no person may engage in the business of installing or servicing conveyances or working on a conveyance unless licensed as of June 1, 2007. These emergency rules are being adopted in order to provide the elevator industry the ability to comply with licensing aspects of the Act and continue working until permanent rules are implemented.

Publication Date: June 1, 2007
Effective Date: June 1, 2007
Expiration Date: See section 7 (2), 2005 Wis. Act 456
Hearing Date: June 27, 2007

Commerce (2)

(Amusement Rides, Ch. Comm 34)

1. Rule adopted creating s. Comm 34.22 (5m), relating to amusement ride safety.

Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. An amusement ride fatality occurred in Wisconsin on July 14, 2007. The ride involved the field attachment of passengers who don harnesses and then are elevated off the ground.

2. Although no mechanical or equipment failure contributed to the incident, attachment and connection practices of the operators did not incorporate safety practices used on some similar rides in the industry.

3. The department recognizes that without promulgating this emergency rule, there could be confusion in what constitutes a recognized safe practice for the field attachment or connection of harnessed passengers on similar amusement rides. The department believes clarifying the code will promote safety.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and the Revisor of Statutes.

Publication Date: August 13, 2007
Effective Date: August 13, 2007
Expiration Date: January 10, 2008
Hearing Date: October 15, 2007
Extension Through: March 9, 2008

2. Rules adopted revising ch. Comm 34, relating to amusement rides and affecting small businesses.

Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. An amusement ride fatality occurred in Wisconsin on July 14, 2007.

2. The department is in the processing of promulgating rule revisions under its Amusement Ride Code, chapter Comm 34 to address two issues that have come to light as a result of the accident investigation. The completion of this rule-making process and their enactment cannot occur prior to the beginning of the 2008 amusement ride season. The issuance of the emergency rules at this time is also necessary to allow amusement ride owners and operators sufficient time to acquire the necessary issuance.

3. The department believes that establishing liability insurance obligations for amusement ride owners and operators will promote safety.

Publication Date: November 12, 2007
Effective Date: January 1, 2008
Expiration Date: May 30, 2008
Hearing Date: December 12, 2007

Commerce

(Financial Resources for Businesses and Communities, Chs. Comm 104—)

EmR 0802 – Rules adopted creating ch. Comm 132, relating to implementing a program for certifying applicants and allocating dairy manufacturing facility investment tax credits, and affecting small businesses.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public welfare.

The facts constituting the emergency are as follows. Under sections 71.07 (3p) (b), 71.28 (3p) (b), and 71.47 (3p) (b) of the Statutes, as created in 2007 Wisconsin Act 20, a taxpayer may claim a dairy manufacturing facility investment credit for dairy manufacturing modernization or expansion during taxable years beginning after December 31, 2006. Sections 71.07 (3p) (a) 3., 71.28 (3p) (a) 3., and 71.47 (3p) (a) 3. of the Statutes define dairy manufacturing modernization or expansion as “constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for dairy manufacturing . . . if acquired and placed in service in this state during taxable years that begin after December 31, 2006, and before January 1, 2015.” Section 71.07 (3p) (c) 2m. a. of the Statutes states that the maximum amount of credits that may be claimed in fiscal year 2007–08 is \$600,000.

Section 560.207 of the Statutes, as likewise created in 2007 Wisconsin Act 20, requires the Department to (1) implement a program for certifying taxpayers as eligible for the dairy manufacturing facility investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in consultation with the Department of Revenue, promulgate rules to administer the program. No other provisions are established in the Statutes regarding the specific process for taxpayers to use in applying for the credits, and for the Department of Commerce to use in certifying eligible taxpayers and in allocating the credits.

Because of enactment of 2007 Wisconsin Act 20, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been incurred during taxable years that began after December 31, 2006.

Entities that may be eligible for the tax credits for the 2007–08 fiscal year face near-term time constraints for filing

their tax returns with the Department of Revenue. Although the Department of Commerce has begun promulgating the permanent rule that is required by 2007 Act 20, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to readily accommodate claiming the tax credits for the 2007–08 fiscal year. This emergency rule will enable the Department of Commerce to establish an application, certification, and tax credit allocation process for the entities that need to soon file their tax returns for taxable years beginning after December 31, 2006.

Publication Date: February 4, 2008
Effective Date: February 4, 2008
Expiration Date: July 3, 2008

Employment Relations Commission

Rule adopted amending **s. ERC 10.08 (1), (2), (3), (4), and (5)**, relating to increased filing fees.

Finding of Emergency

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

1. The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.

2. 2003 Wisconsin Act 33 eliminated \$400,000 in General Program Revenue (GPR) and 4.0 GPR supported positions from the Commission's 2003–2005 budget and increased the number of Program Revenue (PR) filing fee supported positions by 2.0, from 3.0 to 5.0. The same legislation also abolished the Personnel Commission and transferred certain of that agency's former responsibilities to the Employment Relations Commission, without additional staff or funding.

3. The 2005–07 budget maintained the same reduced GPR funding and position levels and the additional PR positions as authorized in 2003 Wisconsin Act 33. The Governor's proposed budget for 2007–09 maintains the same number of GPR and PR funded positions as the previous two budgets.

4. In order to support the 5.0 PR positions provided in the state budgets since 2003, the Employment Relations Commission doubled its filing fees in August, 2003. Despite that increase, filing fee income has averaged \$381,359 over the past four fiscal years, an amount that was approximately \$130,350 less each year than the average budget–authorized PR position expenditures for those same years. As a result the Commission's PR fund balance has been reduced to a level that is wholly insufficient to meet current PR expenditures.

5. Unless the emergency rule making procedures of s. 227.24, Stats., are utilized by the Employment Relations Commission to provide the increased filing fee revenue needed to support the 5.0 positions provided in the PR portion of the Commission's budget, the Commission's ability to provide timely and expeditious dispute resolution services will be significantly harmed.

Publication Date: December 19, 2007
Effective Date: January 2, 2008
Expiration Date: May 31, 2008
Hearing Date: November 12, 2007

Health and Family Services (Health, Chs. HFS 110—)

Rules adopted revising **s. HFS 115.04**, to include the condition known as Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the list of disorders and disorder types found under s. HFS 115.04.

Finding of Emergency

The early identification of particular congenital and metabolic disorders that are harmful or fatal to persons with the disorders is critical to mitigating the negative effects of such disorders. Therefore, s. 253.13, Wis. Stats., requires that every infant born be subjected to blood tests for congenital and metabolic disorders, as specified in administrative rules promulgated by the Department; however, parents may refuse to have their infants screened for religious reasons. The Department has issued ch. HFS 115, Screening of Newborns for Congenital and Metabolic Disorders, to administer this statutory requirement. Currently, s. HFS 115.04 lists 13 congenital and metabolic disorders and types of disorders, for a total of 47 different disorders, for which the state hygiene laboratory must test newborn blood samples.

In determining whether to add or delete disorders from the list under s. HFS 115.04, s. HFS 115.06 directs the Department to seek the advice of persons with expertise and experience concerning congenital and metabolic disorders. For this purpose, the Department has established the Wisconsin Newborn Screening Umbrella Advisory Group. Section HFS 115.06 also lists 6 criteria on which the Department must base its decision to add or delete disorders from s. HFS 115.04. These criteria are as follows:

1. Characteristics of the specific disorder, including disease incidence, morbidity, and mortality.
2. The availability of effective therapy and potential for successful treatment.
3. Characteristics of the test, including sensitivity, specificity, feasibility for mass screening and cost.
4. The availability of mechanisms for determining the effectiveness of test procedures.
5. Characteristics of the screening program, including the ability to collect and analyze specimens reliably and promptly, the ability to report test results quickly and accurately and the existence of adequate follow–up and management programs.
6. The expected benefits to children and society in relation to the risks and costs associated with the testing for the specific condition.

In consideration of these criteria, the Wisconsin Newborn Screening Advisory Umbrella Advisory Group has recently recommended the Department add the condition known as Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the 13 disorders and types of disorders currently screened for and listed in s. HFS 115.04. Persons with SCID are extremely vulnerable to infections, to the degree that the condition is universally fatal without treatment within the first year of life. With an estimated prevalence of 1 in 66,000, and a Wisconsin annual birth rate around 71,000, the failure to screen for SCID could result in the death of 1–2 infants in the state every year.

The Advisory Group also recommended the Department begin screening newborns for SCID and related conditions of immunodeficiency as soon as possible. Before the screening can begin, the Department needs to add these conditions to the list in s. HFS 115.04. Therefore, it is proposed to put an

emergency rule in effect first, to be followed by an identical proposed permanent rule to replace the emergency rule.

The Department will immediately promulgate identical permanent rules to replace these emergency rules.

Publication Date: December 27, 2007
Effective Date: January 1, 2008
Expiration Date: May 30, 2008
Hearing Date: March 6, 2008
 [See Notice this Register]

Natural Resources (Fish and Game, etc., Chs. NR 1—)

Rules adopted affecting **chs. NR 19 and 20**, relating to control of fish diseases and invasive species.

Finding of Emergency

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

The World Health Organization for Animal Health (OIE) lists Viral Hemorrhagic Septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts (part of the Lake Winnebago system) were infected with the VHS virus. On May 23, May 24, and June 1, respectively, the Department learned that brown trout from Lake Michigan, smallmouth bass from Sturgeon Bay, and lake whitefish from Lake Michigan had tested positive for the virus.

Earlier, VHS had been discovered in the Great Lakes, and was known to be moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage basin. Information obtained pursuant to an emergency rule that took effect May 17 revealed that 88 bait dealers harvest live wild minnows from a large number of state waters, including waters that are near or connected to the Mississippi river, the Lake Winnebago system, Green Bay and Lakes Michigan and Superior.

Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. It is expected the USDA APHIS will soon expand its emergency order limiting the interstate transportation of these species to apply to all fish species. The VHS virus can be transported from infected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in Wisconsin is therefore a threat to the public health or safety or to the environment.

Publication Date: November 2, 2007
Effective Date: November 2, 2007
Expiration Date: March 31, 2008
Hearing Date: December 3, 2007

Natural Resources (Environmental Protection – Water Regulation, Chs. NR 300–)

Rules adopted revising **chs. NR 320, 323, 328, 329, 341, 343 and 345**, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits standards that require decontamination of equipment for invasive species and viruses. Without emergency rules to create new general permit standards, any condition imposed would be limited to individual permits only with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits standards to be in effect for the 2007 summer season, with specific standards that require decontamination of equipment for invasive species and viruses.

In addition, The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

Publication Date: July 12, 2007
Effective Date: July 12, 2007
Expiration Date: December 9, 2007
Hearing Date: August 13, 2007
Extension Through: April 5, 2008

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

Rules adopted creating **s. NR 462.015**, relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Preservation of the public welfare necessitates putting the rule into effect prior to the time that it would take if the department complied with the normal procedures. Federal regulations that are the basis for ch. 462, Wis. Adm. Code, were vacated on July 30, 2007 by the U.S. Court of Appeals. Both the vacated federal regulations and ch. NR 462 contain a date for compliance of September 13, 2007. This order is designed to bring state rules into conformity with the court–ordered vacatur of the federal regulations. Normal rule–making procedures will not allow implementation of ch. NR 462 to be stayed before September 13, 2007.

Publication Date: September 13, 2007
Effective Date: September 13, 2007
Expiration Date: February 10, 2008
Hearing Date: October 26, 2007
Extension Through: April 10, 2008

Public Instruction (2)

1. A rule is adopted creating **ch. PI 33**, relating to grants for nursing services.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

The school nursing grant program under s. 115.28 (47), Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$250,000 annually beginning in the 2007–08 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

Publication Date: November 24, 2007
Effective Date: November 24, 2007
Expiration Date: April 23, 2008
Hearing Date: February 21, 2008

2. **EmR 0801** – Rules adopted creating **ch. PI 31**, relating to grants for science, technology, engineering, and mathematics programs.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

The STEM program under s. 115.28 (46), Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$61,500 annually beginning in the 2007–08 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

Publication Date: January 30, 2008
Effective Date: January 30, 2008
Expiration Date: June 28, 2008

Revenue (2)

1. Rules adopted amending **s. Tax 2.505**, relating to the computation of the apportionment fraction by multistate professional sports clubs.

Finding of Emergency

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

The emergency rule is to prescribe the method to be used for apportioning the apportionable income of interstate professional sports clubs.

It is necessary to promulgate this rule order to provide the method of apportionment to be used by interstate professional sports clubs.

Publication Date: October 12, 2007
Effective Date: October 12, 2007
Expiration Date: March 10, 2008

2. A rule was adopted revising **s. Tax 8.63**, interpreting s. 125.54 (7), Stats., relating to liquor wholesale warehouse facilities.

Finding of Emergency

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

The emergency rule is to change the amount of floor space that a liquor wholesaler warehouse facility described in a wholesalers' permit is required to be from 4,000 to 1,000 square feet of floor space. It also creates a provision that allows the minimum square footage requirement to be waived when it is determined that a waiver is fair and equitable.

It is necessary to promulgate this rule order to remove the threat of revenue loss to bona fide liquor wholesalers as a result of having applications for issuance or renewal of permits denied solely because they do not meet the square footage requirement in the existing rule.

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

Publication Date: October 29, 2007
Effective Date: October 29, 2007
Expiration Date: March 27, 2008
Hearing Date: January 2, 2008

Wisconsin Act 20. A corresponding permanent rule will provide that child care rates will not be adjusted for 2008 and 2009.

Publication Date: December 27, 2007
Effective Date: January 1, 2008
Expiration Date: May 30, 2008
Hearing Date: March 10, 2008
[See Notice this Register]

Transportation

Rule adopted creating **ch. Trans 178**, relating to the Unified Carrier Registration System.

Analysis

This chapter establishes in the Wisconsin Administrative Code the fees to be charged under the Unified Carrier Registration (UCR) system, and establishes a method for counting the number of vehicles so that an entity knows whether it is required to register under UCR and, if so, which fee bracket applies to the entity.

Exemption From Finding of Emergency

The Legislature, by Section 2927, as created by 2007 Wis. Act 20, provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: December 19, 2007
Effective Date: December 19, 2007
Expiration Date: May 18, 2008
Hearing Date: March 5, 2008

Workforce Development (Family Supports, Chs. DWD 12 to 59)

Rule adopted amending **s. DWD 56.06 (1) (a) 1. and creating s. DWD 56.06 (1) (a) 1. r.**, relating to child care rates.

Finding of Emergency

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

2007 Wisconsin Act 20 reflects that child care rates will not be increased for the 2008–2009 biennium. Chapter DWD 56 currently provides that child care rates shall be set annually in accordance with a market rate survey and procedures described in s. DWD 56.06 (1). Historically, the rate adjustments have been effective January 1 of the new year. This emergency rule is necessary to provide that child care rates will not be adjusted for 2008 in accordance with 2007

Workforce Development (Public Works Construction Contracts, Chs. DWD 290 to 294)

Rule adopted amending **ss. DWD 290.155 (1) and 293.02 (1) and (2)**, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements and affecting small businesses.

Finding of Emergency

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

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. The adjustment of the thresholds for the application of the payment and performance assurance requirements avoids imposing an additional administrative burden on contractors for the same reason. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the rule-making process.

Publication Date: December 27, 2007
Effective Date: January 1, 2008
Expiration Date: May 30, 2008
Hearing Date: February 14, 2008

Scope Statements

Commerce

Subject

The rule affects ch. Comm 131, relating to the diesel truck idling reduction grant program.

Objective of the Rule

The objective is to update the Department's rules for the Diesel Truck Idling Reduction Grant program to be consistent with changes that were enacted in 2007 Wisconsin Act 20 for sections 560.125 (3) (c) and (4) (c) of the Statutes.

Policy Analysis

Under the current rules, and previous statutory criteria, (1) an applicant pays 30 percent of the eligible costs for each idling reduction unit unless the Department requires payment of a higher percentage; (2) the Department may fund up to the greater of either 25 units or units for 5 percent of the owned truck tractors, for an applicant who owns and operates from 501 to 2500 truck tractors; and (3) the Department may fund units for up to 3 percent of the owned truck tractors, for an applicant who owns and operates more than 2500 truck tractors.

Under the changes enacted in 2007 Act 20, (1) the applicant must pay at least 50 percent of the eligible costs for each idling reduction unit, (2) the 25–unit limit is now 30 units, and (3) the limit for more than 2500 truck tractors is now the greater of either 3 percent or 125 units.

Statutory Authority

Section 560.125 (5m), Stats.

Entities Affected by the Rule

The rule will affect common motor carriers, contract motor carriers, and private motor carriers, who transport freight and who apply for a grant under the diesel truck idling reduction grant program.

Comparison with Federal Regulations

Various federal regulations address efforts to decrease emissions of air contaminants or to decrease the use of energy, by motor vehicles.

Particularly pertinent to the proposed rules is a regulation published by the U.S. Environmental Protection Agency (EPA) in the January 18, 2001, Federal Register, under Title 40, Parts 69, 80, and 86, in the Code of Federal Regulations. Through this regulation, the EPA has established a comprehensive national control program for reducing particulate matter and nitrogen–oxide emissions from heavy–duty diesel engines by 90 percent and 95 percent below previous standard levels, respectively. This national program includes stringent, new emission standards that began to take effect in model year 2007 – and a corresponding significant reduction of the level of sulfur in diesel fuels, which is needed to enable engine components to consistently meet the emission standards.

Extensive federal efforts related to this national program are also underway for reducing these emissions by *reducing diesel engine idling* – such as (1) the EPA's National Clean Diesel Campaign, which is aggressively promoting diesel idling reduction nationwide; (2) the National Transportation Idle–Free Corridors project, as sponsored by the EPA's

SmartWay™ Transport Partnership, which aims to eliminate all unnecessary long–duration diesel truck and locomotive idling at strategic points along major transportation corridors; (3) the Clean Cities Program in the U.S. Department of Energy (DOE), which includes addressing research and development for diesel idling reduction technologies, and corresponding funding of national and state–level demonstration projects; (4) the National Idling Reduction Network News, as published monthly by the DOE's Argonne National Laboratory, which summarizes current events and developments nationwide relating to diesel idling reduction; and (5) the Congestion Mitigation and Air Quality Improvement Program in the U.S. Department of Transportation's Federal Highway Administration, which funds retrofitting of heavy–duty diesel engines that results in reducing nitrogen–oxide emissions in air–quality–related nonattainment or maintenance areas. In addition, Sections 792 and 793 of the federal Energy Policy Act of 2005 authorize the EPA to provide \$200 million per year, for fiscal years 2007–2011, for grants and loans to states and other eligible entities to achieve significant reductions in diesel emissions, and those funds can be used in programs that use verified technology to reduce long–duration idling of medium– and heavy–duty diesel trucks.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 50 hours to develop this rule. This includes drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Commerce

Subject

The rule affects ch. Comm 132, relating to the dairy manufacturing facility investment credit.

Objective of the Rule

The proposed rules would implement the provisions of 2007 Wisconsin Act 20 that relate to certifying applicants and allocating to them tax credits for investments in dairy manufacturing facilities.

Policy Analysis

The Department has rules for several other programs associated with tax credits, but none of those programs relate specifically to investments in dairy manufacturing facilities. The proposed rules are expected to address (1) the eligibility requirements for applicants; (2) the documentation that must be submitted by applicants to become certified as eligible for the dairy manufacturing facility investment credit, and to receive acceptance of incurred expenses for dairy manufacturing modernization or expansion; (3) the Department's response to the submitted documentation; and (4) use of the Department's response when filing a claim with the Department of Revenue for the corresponding tax credit. The alternative of not promulgating these rules would conflict with a directive in section 560.207 (4) of the Statutes, as created in 2007 Wisconsin Act 20, that requires this

promulgation in consultation with the Department of Revenue.

Statutory Authority

Section 560.207 (4), as created in 2007 Wis. Act 20; and section 227.11 (2) (a), Stats.

Entities Affected by the Rule

The rules may affect entities that incur expenses relating to modernization or expansion of dairy manufacturing facilities.

Comparison with Federal Regulations

Neither the Department nor the Department of Revenue is aware of any existing or proposed federal regulation that addresses these tax credits.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rules is expected to range from 100 to 200 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Corrections

Subject

The rule will amend s. DOC 332.19, relating to the annual sex offender registration fee.

Objective of the Rule

The objective of the rule is to amend s. DOC 332.19 to require all persons who are required to register as sex offenders to be charged the annual sex offender registration fee. In addition, the objective of the rule is to limit the use of the sex offender registration fee to offset the costs of monitoring those persons who are required to register. Finally, the objective of the rule is to increase the annual fee to \$100 from \$50. These fees will be used to partially offset the costs of the sex offender registry program.

Policy Analysis

2005 Wisconsin Act 25, Section 2223 created s. 301.45 (10), Stats., which gave the Department of Corrections authority to establish an annual fee to partially offset the costs of monitoring persons who are required to register as sex offenders and who are in the Department's custody or who are on probation, parole or extended supervision. The annual fee was not to exceed \$50.00. The Department of Corrections promulgated s. DOC 332.19 in response to the creation of s. 301.45 (10), establishing a sex offender registration fee.

2007 Wisconsin Act 20, Section 3132 amended s. 301.45 (10), Stats., to expand the persons whom the Department could require to pay the sex offender registration fee from only those in the Department's custody or on probation, parole or extended supervision to all persons required to register. In addition, the amendment of s. 301.45 (10) limited the use of the registration fees to partially offset the costs of monitoring those persons who must register as sex offenders. Finally, the amendment to s. 301.45 (10) increased the maximum annual fee which could be assessed from \$50.00 to \$100.00.

The alternatives to the proposed policy would result in not charging persons who are currently required to register as sex offenders but who are not in the Department's custody or on

probation, parole or extended supervision. Further, if the rule is not changed, it would not limit the use of the sex offender registration fees to offset the costs of monitoring those who are required to register. Finally, the alternative to the proposed policy would be to leave the maximum fee to \$50.00 which would limit the amount of funds collected to offset general program revenue funds used to fund the program.

Statutory Authority

Sections 227.11 (2) and 301.45 (10), Stats.

Entities Affected by the Rule

The Department expects that the proposed rule will affect its staff and those persons subject to sex offender registration under s. 301.45 (10), Stats.

Comparison with Federal Regulations

There is no current or proposed federal regulation which addresses the subject of the proposed rule.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 50 hours to develop this rule, including drafting the rule and complying with rule making requirements.

Corrections

Subject

The rule creates s. DOC 332.20, relating to establishing a reimbursement rate to offset the costs of monitoring persons subject to GPS tracking or passive positioning system tracking.

Objective of the Rule

The objective of the rule is to establish a reimbursement rate to offset the costs of monitoring persons subject to GPS tracking or passive positioning system tracking. The reimbursement rate will be subject to the department's determination of the individual's ability to pay taking into consideration the factors listed in s. 301.48 (4) (d), Stats.

Policy Analysis

2005 Wisconsin Act 431, Section 8 created § 301.48 (4) (b), Stats., which authorizes the Department of Corrections to require a person who is on GPS tracking or passive positioning system tracking to pay the cost of tracking for that person. The amount each person is required to pay is based on that person's ability to pay as determined by the Department under § 301.48 (4) (a) (2) and (d). The factors which the Department of Corrections must consider in this determination are: the person's financial resources, the present and future earning ability of the person, the needs and earning ability of the person's dependents, any other costs that the person is required to pay in conjunction with the supervision of the person by the department of corrections or the department of health and family services, and any other factors that the department of corrections considers appropriate.

The alternatives to the proposed policy would result in not establishing a method for assessing persons subject to GPS tracking or passive positioning system tracking for the costs of the program as provided in the legislation. If the Department does not collect the funds under this legislation, then the costs would be fully covered by general program revenue funds.

Statutory Authority

Sections 227.11 (2) and 301.48 (4) (b), Stats.

Entities Affected by the Rule

The Department expects that the proposed rule will affect its staff and those persons subject to GPS and passive system monitoring under s. 301.48 (4) (b), Stats.

Comparison with Federal Regulations

There is no current or proposed federal regulation which addresses the subject of the proposed rule.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 50 hours to develop this rule, including drafting the rule and complying with rule making requirements.

Corrections**Subject**

The rule creates s. DOC 332.21, relating to establishing a procedure for the Department to determine if global positioning system tracking is appropriate for a person who committed a serious child sex offense or who is under supervision under the interstate corrections compact for a serious child sex offense but who is not subject to lifetime tracking under s. 301.48 (2), Stats., by assessing the person's risk by using a standard risk assessment instrument.

Objective of the Rule

The objective of the rule is to establish a systematic and consistent process for utilizing a standard risk assessment instrument to determine if GPS tracking is appropriate for certain serious child sex offenders.

Policy Analysis

2007 Wisconsin Act 20, Section 3148r created s. 301.48 (2g), Stats., which requires the Department of Corrections to assess a person's risk using a standard risk assessment instrument to determine if GPS tracking is appropriate for the person who committed a serious child sex offense or who is under supervision under the interstate corrections compact for a serious child sex offense.

The alternatives to the proposed policy would result in not establishing a risk assessment process as required under the recently passed legislation.

Statutory Authority

Sections 227.11 (2) and 301.48 (2g), Stats.

Entities Affected by the Rule

The Department expects that the proposed rule will affect its staff and those persons subject to GPS and passive system monitoring under s. 301.48 (2g), Stats.

Comparison with Federal Regulations

There is no current or proposed federal regulation which addresses the subject of the proposed rule.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 200 hours to develop this rule, including drafting the rule and complying with rule making requirements.

Natural Resources**Subject**

The rule affects ch. NR 47, relating to grant funding for catastrophic storm damage caused to urban forests.

Objective of the Rule

The objective is to amend Chapter NR 47 Subchapter V, Urban and Community Forestry Grant Program, to establish the process to provide urban forestry grants to counties, cities, villages, towns, tribal governments and 501(c)(3) nonprofit organizations who have been affected by catastrophic storm events. Rule promulgation is necessary to determine application procedures, selection process, funding level, eligible costs, project standards, and other program requirements.

Policy Analysis

The revisions to ch. NR 47 Subchapter V, Urban and Community Forestry Grant Program, will make the rule consistent with the changes made by 2007 Act 13 to Section 23.097(1r), Wis. Stats. 2007 Act 13 authorized the expansion of the existing Urban and Community Forestry Grant Program to include awards for the costs of saving, removing, or replacing trees damaged in a catastrophic storm event in an urban area for which the governor has declared a state of emergency.

The revisions will update the following rule sections: applicability, distribution of grant assistance; grant assistance application; grant payments, eligibility criteria, and dispute resolution and arbitration.

Statutory Authority

Section 23.097 (1r), Wis. Stats.

Entities Affected by the Rule

Counties, cities, villages, towns, tribal governments and 501(c)(3) nonprofit organizations that have been affected by catastrophic storm events.

Comparison with Federal Regulations

Currently no assistance is provided to the above listed entities from the Federal Emergency Management Administration (FEMA) for 1) restorative pruning to damaged public or private trees 2) removal and clean up of destroyed trees on private property 3) re-planting of destroyed public or private trees; this program will fill that gap.

Estimate of Time Needed to Develop the Rule

380 hours

Contact Information

Dick Rideout, Urban Forestry Coordinator
101 S. Webster Street
Madison, WI 53717
Tel: (608) 267-0843
Email: richard.rideout@wisconsin.gov

Public Defender Board**Subject**

The rule affects chs. PD 2, 3, and 6, relating to representation by the State Public Defender of persons detained under chapters 51 or 55, Stats., or subject to involuntary administration of psychotropic medication without a pre-determination of financial eligibility.

Objective of the Rule

- Remove the requirement of financial eligibility by the SPD before legal counsel is appointed
- Remove the prepayment options for Ch. 51/55 case types
- Create a new rule for reimbursement rates for Ch. 51/55 case types

- Include collection of reimbursement ordered under Ch. 51/55 quarterly report to Joint Committee on Finance

Policy Analysis

2007 Wisconsin Act 20 (the budget bill) removed the requirement that persons subject to civil commitment proceedings of Chs. 51 or 55, Stats., complete a pre–representation indigency evaluation and required the SPD to appoint counsel without a determination of indigency. At the conclusion of the proceeding, the Court could inquire as to the person’s ability to reimburse the state for the cost of representation. If the court determined that the individual was able to make reimbursement for the costs of representation, the court could order the person to reimburse the state an amount not to exceed the maximum amount established by the SPD Board, currently established in Wis. Adm. Code section PD 6.01. The court could require the SPD to conduct a determination of indigency and report the results of that determination to the court. Any reimbursement would have to be made to the clerk of courts for the county where the proceedings took place. The clerk of each county would deposit 25% of the reimbursement payments to the county treasury and transmit the remaining 75% to the Secretary of the Department of Administration to be credited in the private bar and investigator reimbursement appropriation. The clerks of court for each county would have to report to the SPD by 31 January the total amount of court ordered reimbursements under Chs. 51 and 55, Stats., for the previous calendar year. The SPD must include in the quarterly report to JCF the reimbursements received under this section. The effective date of these provisions is 1 July 2008.

Statutory Authority

Sections 977.02 (2m), (3), (4m), (4r), Stats.

Statutes Interpreted

Sections 977.075 (1g), (4), 977.085 (3), Stats.

Entities Affected by the Rule

Entities that may be affected by the rule are circuit courts, county corporation counsels’ offices and district attorneys’ offices that pursue Ch. 51 and Ch. 55 petitions, private attorneys who accept appointments to represent persons detained under Ch. 51 and Ch. 55 petitions and persons who are detained under Ch. 51 and Ch. 55 petitions.

Comparison with Federal Regulations

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Estimate of Time Needed to Develop the Rule

30 hours; no other resources are necessary.

Fiscal Analysis

2007 Wisconsin Act 20 provided for the biennium \$320,500 GPR to permit the SPD to represent adults subject to civil commitment proceedings of Chs. 51 or 55 without a pre–appointment determination of indigency. Because the effective date of the legislation occurs mid–biennium, this amount was reduced to \$182,100 to reflect that the fully annualized cost associated with this change would not be incurred until 2009–10. The rule changes outlined above implement the legislative changes and, therefore, do not add any cost.

Summary: In summary, the fiscal effect of these legislative changes is funded at \$320,500 biennially. The proposed rule changes only implement the legislative changes and do not add any cost.

Fiscal Impact on Private Sector: The proposed rule changes do not have a fiscal impact on the private sector because these proposed changes only implement legislative changes and, therefore, do not have any fiscal effect.

Submittal of Rules to Legislative Council Clearinghouse

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

Commerce CR 08–008

On January 30, 2008, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rule affects ch. Comm 156, relating to a grant program for rehabilitation and recycling of manufactured housing, and affecting small business.

Agency Procedure for Promulgation

The Department's Bureau of Local Development is responsible for promulgation of the rules. A public hearing will be held on February 29, 2008.

Contact Person

Sam Rockweiler
Code Development Consultant
Phone: (608) 266–0797
Email: srockweiler@commerce.state.wi.us

Health and Family Services CR 08–005

On January 25, 2008, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rule affects ch. HFS 115, relating to the addition of Severe Combined Immunodeficiency and related conditions of immunodeficiency (SCID) to the list of congenital and metabolic disorders for which newborns are screened.

Agency Procedure for Promulgation

A public hearing will be held on March 6, 2008.

Contact Person

Alexandria M. Meyer, MS, CGC
Genetic & Newborn Screening Coordinator
Division of Public Health
1 West Wilson Street, Room 233
Madison, WI 53701
Phone: (608) 267–7148
Email: meyeram@dhs.state.wi.us

Insurance CR 08–006

On January 25, 2008, the Office of the Commissioner of Insurance submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rule will affect ch. Ins 17, relating to fund fees and mediation panel fees for fiscal year 2009.

Agency Procedure for Promulgation

A public hearing will be held on March 4, 2008.

Contact Person

A copy of the proposed rule may be obtained from the website at: <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams
Public Information and Communications
Office of the Commissioner of Insurance
Phone: (608) 264–8110

For additional information, please contact:

Theresa L. Wedekind
OCI Legal Unit
Phone: (608) 266–0953
Email: theresa.wedekind@wisconsin.gov

Public Instruction CR 08–007

On January 28, 2008, the Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule creates ch. PI 31, relating to grants for science, technology, engineering and mathematics (STEM) programs.

Agency Procedure for Promulgation

Public hearings will be scheduled. The Division for Academic Excellence is primarily responsible for promulgation of this rule.

Contact Person

Sharon Wendt, Director
Career and Technical Education
Phone: (608) 267–9251
Email: sharon.wendt@dpi.state.wi.us

Workforce Development CR 08–009

On February 1, 2008, the Department of Workforce Development submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect ch. DWD 56, relating to child care rates and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 10, 2008. The organizational unit responsible for the

promulgation of the proposed rules is the DWD Division of Family Supports.

Contact Person

Elaine Pridgen

Phone: (608) 267-9403

Email: elaine.pridgen@dwd.state.wi.us

Rule–Making Notices

Notice of Hearing

Commerce

(Housing Assistance, Chs. Comm 150—)

CR 08–008

NOTICE IS HEREBY GIVEN that pursuant to section 560.285 (3), Stats., the Department of Commerce will hold a public hearing on proposed rules creating chapter Comm 156, relating to establishing a grant program for rehabilitation and recycling of manufactured housing, and affecting small business.

Hearing Information

<u>Date and Time</u>	<u>Location</u>
Friday February 29, 2008 10:00 a.m.	Thompson Commerce Center, Third Floor, Room 3B 201 West Washington Avenue Madison, Wisconsin

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until March 5, 2008, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. All written comments should be submitted by e–mail to srockweiler@commerce.state.wi.us. If e–mail submittal is not possible, written comments may be mailed to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

Agency Contact Person

Betty Kalscheur, Wisconsin Department of Commerce, Bureau of Local Development, 201 West Washington Avenue, Madison, WI 53703; Telephone (608) 267–6904; Email Betty.Kalscheur@wisconsin.gov

Copy of Rule

The proposed rules and an analysis of the rules are available on the Internet, by entering “Comm 156” in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Betty Kalscheur at the Wisconsin Department of Commerce, Bureau of Local Development, 201 West Washington Avenue, Madison, WI 53703; or at

Telephone (608) 267–6904; or at Betty.Kalscheur@wisconsin.gov. Copies will also be available at the public hearing.

Analysis Prepared by Department of Commerce

Statutes interpreted

Section 560.285, Stats., as created in section 75 of 2005 Wisconsin Act 45.

Statutory authority

Sections 227.11 (2) (a) and 560.285 (3), Stats.

Explanation of agency authority

Section 560.285 (3) of the Statutes authorizes the Department to promulgate rules for establishing a program that will provide financial assistance to (1) persons engaged in the disposal of abandoned manufactured homes, (2) municipalities for supporting environmentally sound disposal practices, and (3) individuals who reside in manufactured homes which are in need of critical repairs. Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department.

Related statute or rule

The Department has rules for several other programs associated with financial assistance for housing and communities, but those programs do not address recycling of manufactured housing, and do not address rehabilitation of manufactured housing in the manner addressed by these rules.

Plain language analysis

These rules establish the criteria for administering a manufactured housing rehabilitation and recycling grant program that will provide financial assistance to (1) persons engaged in the disposal of abandoned manufactured homes, (2) municipalities supporting environmentally sound disposal practices, and (3) individuals who reside in manufactured homes which are in need of critical repairs.

The rules specify who is eligible to apply for and administer the program. In addition, the rules establish eligible activities, eligible properties, and eligible costs. Parameters for allocating the funds are likewise specified. These parameters emphasize (1) the applicant’s capacity to complete the proposed activities, (2) technical expertise with manufactured housing, (3) geographic coverage of activities, and (4) performance in administering other housing programs.

Comparison with federal regulations

An Internet–based search of the *Code of Federal Regulations* for grants for manufactured housing found regulations for rental rehabilitation grants in 24 CFR 511. These grants can be used for rehabilitation of manufactured rental housing units that are on a permanent foundation, have permanent utility hook–ups, are designed for use as a permanent residence, and meet the Section 8 housing quality standards for manufactured homes in 24 CFR 882.109(o). No other existing federal regulations for grant programs for rehabilitation or recycling of manufactured housing were revealed.

An Internet–based search for grants for manufactured housing in the 2006 and 2007 volumes of the *Federal Register*

did not identify any proposed federal regulation that addresses rehabilitation or recycling of manufactured housing.

Comparison with rules in adjacent states

An Internet–based search of rules in adjacent states found rules in Minnesota for owner–occupied single–family rehabilitation programs. These programs can assist owners of manufactured housing, as well as other types of single–family housing, to correct health and safety issues and local code violations. Assistance is limited to households with incomes at or below 80 percent of county median income for the county of residence.

Northfield, Minnesota was found to have a manufactured home rehabilitation grant program. This program provides owners of manufactured homes in Northfield with a grant of up to \$2,000 to increase the safety, security and efficiency of their manufactured homes. The income of participating households cannot exceed 80 percent of the area median income. Eligible improvements includes those that remove or repair various health and safety issues or increase energy efficiency; add structural soundness; make the unit accessible; address roofs, windows, doors, floor supports or faulty plumbing; and that will bring the manufactured home up to the prevailing building code.

An Internet–based search of rules for manufactured housing disposal grant programs found no sources of funding in adjacent states.

Factual data and analytical methodologies

The data and methodology for developing these rules were derived from and consisted of incorporating the criteria in section 75 of 2005 Wisconsin Act 45; incorporating applicable best practices the Department has developed in administering similar programs for owner–occupied housing rehabilitation; soliciting and utilizing input from representatives of the stakeholders who are expected to participate in this program; and reviewing Internet–based sources of related federal, state, and private–sector information.

Analysis and supporting documents used to determine effect on small business

The Department solicited input from numerous housing service providers. Emphasis was placed on input relating to minimizing difficulties for businesses or service providers engaged in housing repair/rehabilitation or disposal of abandoned housing units.

Agency Contact Person

Betty Kalscheur, Wisconsin Department of Commerce, Bureau of Local Development, 201 West Washington Avenue, Madison, WI 53703; telephone: 608–267–6904; E–Mail: Betty.Kalscheur@wisconsin.gov.

Environmental Analysis

NOTICE IS HEREBY GIVEN that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

The rules are not expected to impose any significant costs on small businesses. The rules provide a potential cost benefit to small businesses engaged in the disposal of abandoned manufactured homes.

Types of small businesses that will be affected by the rules

Any nonprofit organization that chooses to apply for grant funding under the rules.

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

Applicants for becoming funded must submit an application that demonstrates their capacity to complete their proposed activities, their technical expertise with manufactured housing, and their performance in other housing programs.

Types of professional skills necessary for compliance with the rules

No new professional skills would be needed for compliance with these rules.

Will the rules have a significant economic impact on small businesses?

No.

Small business regulatory coordinator

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267–0297, or by e–mail at cdunn@commerce.state.wi.us.

Fiscal Estimate

Summary

Although the proposed rules would newly result in review of documentation relating to awarding grants to nonprofit organizations for rehabilitation and recycling of manufactured housing, the number of these reviews is expected to be too small to result in significant changes in the Department’s costs for administering its housing assistance programs. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

The proposed rules are not expected to impose any significant costs on the private sector, because the rules address only voluntary submittal of documentation relating to grants for rehabilitation and recycling of manufactured housing.

State fiscal effect

None

Local fiscal effect

None

Long–range fiscal implications

None

Notice of Hearing Health and Family Services (Health, Chs. HFS 110—) CR 08–005

NOTICE IS HEREBY GIVEN that pursuant to ss. 253.13 (1) and 227.11 (2), Stats., and interpreting s. 253.13, Stats., the Wisconsin Department of Health and Family Services will

hold a public hearing on emergency rules, and permanent rules creating s. HFS 115.04 (14), relating to screening newborns for Severe Combined Immunodeficiency and related conditions of immunodeficiency (SCID) at the date, time, and location listed below. The Department's emergency rules became effective on January 1, 2008.

Hearing Information

<u>Date and Time</u>	<u>Location</u>
March 6, 2008 10 am to 12 pm.	Dept. of Health and Family Services 1 W. Wilson Street, Rm. B139 Madison, Wisconsin

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication at a hearing difficult; you require an interpreter or a non-English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Copy of Rules

A copy of the full text of the rules and the fiscal estimate can be obtained at no charge from the Wis. Administrative Rules website at <http://adminrules.wisconsin.gov> or by contacting the person listed below.

Submission of Written Comments

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule website at <http://adminrules.wisconsin.gov>.

The deadline for submitting comments to the Department is 4:30 p.m. on March 13, 2008.

Agency Contact Person

Alexandria M. Meyer, MS, CGC
Genetic & Newborn Screening Coordinator
Division of Public Health
1 West Wilson Street, Room 233
Madison, WI 53701
Phone: 608–267–7148
Email: meyeram@dhsf.state.wi.us

Analysis Prepared by the Department of Health and Family Services

Statute interpreted

Section 253.13, Stats.

Statutory authority

Sections 253.13 (1) and 227.11 (2), Stats.

Explanation of agency authority

Section 253.13 (1), Stats., stipulates that every infant born in Wisconsin to be subjected to blood tests for congenital and metabolic disorders, as specified in rules promulgated by the department. Section 227.11 (2), Stats., grants each agency rule-making authority, provided it conforms to expressly provided guidelines.

Plain language analysis

The Department in an emergency order effective January 1, 2008, added Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the list of congenital and metabolic disorders and types of disorders for

which newborns are required to be screened, except when objected to for religious reasons, under s. HFS 115.04. The early identification of particular congenital and metabolic disorders that are harmful or fatal to persons with the disorders is critical to mitigating the negative effects of such disorders. Persons with SCID are extremely vulnerable to infections, to the degree that the condition is universally fatal without treatment within the first year of life. With an estimated prevalence of 1 in 66,000, and a Wisconsin annual birth rate around 71,000, the failure to screen for SCID could result in the death of 1–2 infants in the state every year.

This proposed permanent rule is intended to replace the emergency rule currently in effect.

When SCID and related conditions of immunodeficiency are permanently added to the list of disorders under s. HFS 115.04, follow-up and management will be conducted by specialists and primary care physicians. Families of infants will receive intensive counseling and be fully apprised of treatment options and availability. The Wisconsin Congenital Disorders Program is responsible for coordinating the activities of managing specialists, but will not provide direct patient care.

All newborn screening tests are currently paid for by user-generated fees. The State Laboratory of Hygiene charges hospitals \$69.50 for each newborn screening sample collection card. Hospitals in turn charge parents for newborn screening, which is typically included in the labor and delivery bill and covered by the mother's insurance. A grant from the Jeffrey Modell Foundation, which is matched by the Children's Hospital of Wisconsin and the Medical College of Wisconsin, will fund the cost of testing for SCID through 2008. For the years 2009, 2010, and 2011, the Wisconsin State Laboratory of Hygiene and Division of Public Health will actively seek additional grant funding in order to continue screening for SCID and related conditions of immunodeficiency, at no cost to the state. If grant funding is not available, the fee for the newborn screening sample card will need to be increased by January 1, 2009. The annual cost of screening an estimated 71,000 births in Wisconsin for SCID and related conditions of immunodeficiency will be approximately \$387,000. This increased cost will raise fees by \$5.50 per child, for a total screening fee of \$75.00 per child screened.

In the absence of this screening, babies who are undiagnosed or diagnosed late with SCID typically cost \$1–2 million each to treat (this figure is based on audited costs from Children's Hospital of Wisconsin, the facility which treats children with SCID, but without benefit of early diagnosis). Babies with SCID, diagnosed in the first week of life can be cured by bone marrow transplantation (estimate 75–95% cure rate) at a charge of \$170,000/discharge (2005 J Peds, McGhee et.al.) In treating infants with SCID, the state would not assume responsibility for the bone marrow transplantation, since the Congenital Disorders Program historically pays only for initial follow-up visits and confirmatory testing. It is expected that the savings to Medicaid may be substantial for each eligible affected child receiving early diagnosis.

Comparison with federal regulations

There are no current federal regulations concerning newborn screening, nor are there any that specifically address screening newborn infants for the condition known as SCID.

Comparison with rules in adjacent states

Illinois: Illinois currently has no rule or statute addressing newborn screening for SCID.

Iowa: Iowa currently has no rule or statute addressing newborn screening for SCID.

Michigan: Michigan currently has no rule or statute addressing newborn screening for SCID.

Minnesota: Minnesota currently has no rule or statute addressing newborn screening for SCID.

Summary of factual data and analytical methodologies

In determining whether to add or delete SCID and related conditions of immunodeficiency to the list of disorders under s. HFS 115.04, the Department sought advice from the Wisconsin Newborn Screening Umbrella Advisory Group (Advisory Group). The Department and the Advisory Group considered the following criteria under s. HFS 115.06:

1. Characteristics of the specific disorder, including disease incidence, morbidity, and mortality.
2. The availability of effective therapy and potential for successful treatment.
3. Characteristics of the test, including sensitivity, specificity, feasibility for mass screening and cost.
4. The availability of mechanisms for determining the effectiveness of test procedures.
5. Characteristics of the screening program, including the ability to collect and analyze specimens reliably and promptly, the ability to report test results quickly and accurately and the existence of adequate follow-up and management programs.
6. The expected benefits to children and society in relation to the risks and costs associated with the testing for the specific condition.

In consideration of these criteria, the Advisory Group recommended the Department add the condition known as and related conditions of immunodeficiency to the 13 disorders and types of disorders currently screened for under s. HFS 115.04.

Initial Regulatory Flexibility Analysis

The rule change will not affect small business as “small business” is defined in s. 227.114 (1) (a), Stats., as small businesses are not involved in the process of screening newborns for congenital and metabolic disorders.

Small business regulatory coordinator

Rosie Greer
Greerrj@dhfs.state.wi.us
608-266-1279

Fiscal Estimate

Summary

Wisconsin Statute 253.13 requires that every infant born be subjected to blood tests for congenital and metabolic disorders; however, parents may refuse to have their infants screened for religious reasons. The Wisconsin Newborn Screening Umbrella Advisory Group recommended to the Department the addition of Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the screening panel. Infants with SCID are extremely vulnerable to infections, to the degree that the condition is universally fatal if not detected and treated within the first year of life.

The Department of Health and Family Services works closely with the Wisconsin State Laboratory of Hygiene to implement the program.

The rule change would add SCID and related conditions of immunodeficiency to the 13 disorders and disorder types currently screened for under HFS 115.04. All newborn screening tests are currently paid for by user-generated fees.

The State Laboratory of Hygiene charges hospitals \$69.50 for each newborn screening sample collection card. Hospitals in turn charge parents for newborn screening, which is typically included in the labor and delivery bill and covered by the mother's insurance. A grant from the Jeffrey Modell Foundation, which is matched by the Children's Hospital of Wisconsin/Medical College of Wisconsin, will fund the cost of testing for SCID through 2008. For subsequent years, the Wisconsin State Laboratory of Hygiene and Division of Public Health will actively seek additional grant funding in order to continue screening for SCID and related conditions of immunodeficiency at no cost to the state.

If grant funding is not available, the fee for the newborn screening sample card will need to be increased by January 1, 2009. The annual cost of screening an estimated 71,000 births in Wisconsin for SCID will be approximately \$387,000. This increased cost will raise fees by \$5.50 per child, for a total screening fee of \$75.00 per child screened. In the absence of this screening, babies who are undiagnosed or diagnosed late with SCID typically cost \$1-2 million each to treat (this figure is based on audited costs from Children's Hospital of Wisconsin, the facility which treats children with SCID, but without benefit of early diagnosis). Babies diagnosed in the first week of life can be cured by bone marrow transplantation (at least 75% cure rate) at a charge of \$170,000/discharge (2005 J Peds, McGhee et.al.). Typically, the cost of this treatment for infants with SCID is paid by the infant's health insurance or Medicaid and is not a cost to the Congenital Disorders Program, which pays only for initial follow-up visits and confirmatory testing. It is expected that the savings to Medicaid may be substantial for each eligible affected child receiving early diagnosis.

Local fiscal effect

None

Private sector fiscal effect

None

Long-range fiscal implications

The surcharge for the newborn screening collection card, currently \$69.50, will need to be increased to approximately \$75.00 as early as January 1, 2009. This increase will be in user-generated fees. It is possible an increase in the surcharge will not be necessary until 2012, if additional grant funding is obtained.

Notice of Hearing

Insurance

CR 08-006

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of a proposed rule affecting sections Ins 17.01 (3) and 17.28 (6), Wis. Adm. Code, relating to fund fees and mediation panel fees for fiscal year 2009 and affecting small business.

Hearing Information

Date: March 4, 2008

Time: 10:00 a.m., or as soon thereafter as the matter may be reached

Place: OCI, Room 223
125 South Webster St. – 2nd Floor
Madison, WI

Agency Contact Person and Copy of Rule

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams, OCI Services Section, at:
 Phone: (608) 264–8110
 Email: inger.williams@wisconsin.gov
 Address: 125 South Webster St – 2nd Floor
 Madison WI 53703–3474
 Mail: PO Box 7873, Madison, WI 53707–7873

Submission of Written Comments

Written comments can be mailed to:
 Theresa L. Wedekind
 OCI Rule Comment for Rule Ins 1728
 Office of the Commissioner of Insurance
 PO Box 7873
 Madison WI 53707–7873

Written comments can be hand delivered to:
 Theresa L. Wedekind
 OCI Rule Comment for Rule Ins 1728
 Office of the Commissioner of Insurance
 125 South Webster St – 2nd Floor
 Madison WI 53703–3474

Comments can be emailed to:
 Theresa L. Wedekind
theresa.wedekind@wisconsin.gov

Comments submitted through the Wis. Administrative Rule web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in this Notice of Hearing.

Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

Statutes interpreted

Sections 655.27 (3), and 655.61, Wis. Stats.

Statutory authority

Sections 601.41 (3), 655.004, 655.27 (3) (b), and 655.61 (12), Wis. Stats.

Explanation of agency authority

The commissioner of insurance, with the approval of the board of governors (board) of the injured patients and families compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund and the annual fee due for the operation of the medical mediation panel.

Related statutes or rule

None

Plain language analysis

This rule establishes the fees which participating health care providers must pay to the fund for the fiscal year beginning July 1, 2008. These fees represent a 0% change with fees paid for the 2007–08 fiscal year. The board approved these fees at its meeting on December 12, 2007, based on the recommendation of the board's actuarial and underwriting committee and reports of the fund's actuaries.

The board is also required to promulgate by rule the annual fees for the operation of the injured patients and families

compensation mediation system, based on the recommendation of the director of state courts. The recommendation of the director of state courts was reviewed by the board's actuarial and underwriting committee. This rule implements the funding level approved by the board by establishing mediation panel fees for the next fiscal year at \$18.00 for physicians and \$2.50 per occupied bed for hospitals, representing an increase of \$1.00 per physician and \$1.50 per occupied bed for hospitals from 2007–08 fiscal year mediation panel fees.

Comparison with federal regulations

To the fund board's and OCI's knowledge there is no existing or proposed federal regulation that is intended to address patient compensation fund rates, administration or activities.

Comparison of rules in adjacent states

To the fund board's and OCI's knowledge there are no similar rules in the adjacent states to compare this rule to as none of these states have a patients compensation fund created by statute where rates are directed to be established yearly by rule as is true in Wisconsin.

Summary of factual data and analytical methodologies

None. This rule establishes annual fund fees pursuant to the requirements of the above–noted Wisconsin statutes.

Analysis and supporting documents used to determine effect on small business

This increase in mediation panel fees will have an effect on some small businesses in Wisconsin. The mediation panel fee is assessed only on physicians and hospitals, not on corporations or other health care entities. The increase will affect only those small business that pay the mediation panel fees on behalf of their employed physicians. However, the increase in the mediation panel fee will not have a significant effect nor should it negatively affect the small business's ability to compete with other providers.

Initial Regulatory Flexibility Analysis

This rule will have little or no effect on small businesses. The increase contained in the proposed rule will require providers to pay an increased mediation panel fee which will increase the operational expenses for the providers. However, this increase is very minimal and will have no effect on the provider's competitive abilities.

Fiscal Estimate

Summary

The Injured Patients and Families Compensation Fund (IPFCF or Fund) is a segregated fund. Annual Fund fees are established to become effective each July 1 based on actuarial estimates of the Fund's needs for payment of medical malpractice claims. The proposed fees were approved by the Fund's Board of Governors at its December 12, 2007 meeting.

The Fund is a unique fund; there are no other funds like it in the country. The WI Fund provides unlimited liability coverage and participation is mandatory. These two features make this Fund unique compared to funds in other states. The only persons who will be affected by this rule change are the Fund participants themselves as the IPFCF is fully funded through assessments paid by Fund participants.

There is no effect on GPR.

Private sector fiscal effect

The increase in fees promulgated by this rule does not result in a significant fiscal effect on the private sector. The cost of mediation panel fees is a very small portion of the expenses incurred by health care providers. Although a health

care provider may pass this increase on to its patients, there will not be a significant fiscal effect on the private sector as a result of this proposed rule.

State fiscal effect

None

Local fiscal effect

None

Long-range fiscal implications

None

**Notice of Hearing
Workforce Development
(Family Supports, Chs. DWD 12–59)
CR 08–009**

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.155 (6) and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules affecting ch. DWD 56, relating to child care rates and affecting small businesses.

Hearing Information

March 10, 2008	MADISON
Monday	G.E.F. 1 Building, D203
1:30 p.m.	201 E. Washington Avenue

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267–9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Agency Contact Person

Laura Saterfield, Child Care Section Chief,
laura.saterfield@dwd.state.wi.us, (608) 266–3443.

Copy of Rule

An electronic copy of the proposed rules is available at <http://www.dwd.state.wi.us/dwd/hearings.htm>. A copy of the proposed rules is also available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707–7946
phone: (608) 267–9403
Email: elaine.pridgen@dwd.state.wi.us

Submission of Written Comments

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than March 11, 2008, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by the Department of Workforce Development

Statutory authority

Sections 49.155 (6) and 227.11 (2), Stats.

Statutes interpreted

Section 49.155 (6), Stats.

Explanation of agency authority

Section 49.155 (6), Stats., provides that, subject to review and approval by the department, each county shall establish maximum reimbursement rates for child care services provided to eligible individuals by licensed and certified child care providers. Each county shall set the rate for licensed providers so that at least 75% of the number of places for children within the licensed capacity of all child care providers in the county can be purchased at or below that maximum rate. The maximum reimbursement rate for Level I certified providers may not exceed 75% of the rate established for licensed providers, and the maximum reimbursement rate for Level II certified providers may not exceed 50% of the rate established for licensed providers.

Summary of the proposed rule

Under s. DWD 56.06, the Department or each county must survey all licensed providers each year to determine the child care prices they charge the general community. The county or tribal agency annually sets maximum reimbursement rates based on the survey, unless the Department sets multi-county rates. The maximum rate for licensed providers is set so that at least 75% of the number of places for children within the licensed capacity of all child care providers in the county can be purchased at or below that maximum rate. Separate maximum rates are set for licensed group child care centers, licensed family child care centers, Level I certified family child care providers, and Level II certified family child care providers. Separate maximum rates are also set for children in various age groupings. The current rates are multi-county rates set by the Department in 2006 under s. DWD 56.06 (1) (a) 1.

Prior to 2007, the adjusted rates based on the annual survey have generally become effective January 1 of the new year. The child care rates were not adjusted in January 2007 due to a projected SFY 2007 budget shortfall.

2007 Wisconsin Act 20 reflects that the child care rates will not be increased for the 2008–2009 biennium. This rule provides that the rates will not be adjusted for 2008 and 2009, and the rates effective on December 31, 2006, will remain in effect. A corresponding emergency rule that was effective January 1, 2008, provides that rates will not be increased for 2008.

Summary of factual data and analytical methodologies

The Governor's proposed child care budget included numerous cost containment strategies, including the rate freeze. (Legislative Fiscal Bureau Budget Paper #891, May 22, 2007) The Legislature added \$65 million to the child care budget above the Governor's proposal and deleted or modified many of the Governor's other cost containment proposals. The freeze on child care rates was not changed and is included in 2007 Wisconsin Act 20.

Comparison with federal regulations

Under 45 CFR 98.43, a state must certify that state payment rates for the provision of child care services funded under the Child Care and Development Fund are sufficient to ensure equal access to child care services for eligible families as families not eligible for child care assistance. At a minimum, the state must show that it considered 3 key elements in determining that its child care program provides equal access for eligible families: 1) Adequate payment rates based on a local market rate survey conducted no earlier than two years prior to the effective date of the current plan; 2) Choice of the full range of categories and types of providers; and 3) Affordable copayments.

In the commentary issued with the regulation, the Administration for Children and Families notes that rates established at least at the 75th percentile of the market rate would be regarded as providing equal access. Under the former title IV–A child care program, states were required to set rates at this level. (63 FR 39936, 39959, July 24, 1998)

Comparison with rules in adjacent states

A 2007 study by the National Women’s Law Center, entitled *State Child Care Assistance Policies 2007: Some Steps Forward, More Progress Needed* compared state 2007 reimbursement rates to market rates for child care centers. The study found that Wisconsin was one of 9 states that had reimbursement rates at or above the 75th percentile of the market rate in 2007 and one of 22 states that had reimbursement rates at or above the 75th percentile of the market rate in 2001.

Michigan. Reimbursement rates have not been increased since 1997. Rates in 2007 were at the 75th percentile of 1996 market rates. In Wayne County, the percentage difference between the state rate and the 75th percentile of the market rate was –42% for center care of a 4–year–old and –46% for care of a one–year–old.

Minnesota. In Hennepin County, the percentage difference between the state 2007 rate and the 75th percentile of the market rate was –9% for center care of a 4–year–old and –10% for care of a one–year–old.

Illinois. In Cook County, the percentage difference between the state 2007 rate and the 75th percentile of the market rate was –35% for center care of a 4–year–old and –28% for care of a one–year–old.

Iowa. The percentage difference between the statewide 2006 rate and the 75th percentile of the market rate was –10% for center care of a 4–year–old and –7% for care of a one–year–old.

The National Women’s Law Center study *State Child Care Assistance Policies 2007: Some Steps Forward, More Progress Needed* is available at <http://www.nwlc.org/pdf/StateChildCareAssistancePoliciesReport07web.pdf>.

Initial Regulatory Flexibility Analysis

The emergency and permanent rules are merely

implementing the policy and funding provided for the child care subsidy program in 2007 Wisconsin Act 20. The policy of freezing child care rates does not have a significant economic impact on small businesses that are child care providers statewide. Due to interest expressed in the impact of freezing child care rates by the Small Business Regulatory Review Board in 2007, the Department is submitting an analysis of the 2008 rules implementing the rate freeze for review under s. 227.14 (2g), Stats.

Analysis used to determine effect on small businesses

The funding provided for the child care subsidy program under 2007 Wisconsin Act is based on the assumption that child care rates will not be increased for the 2008–2009 biennium.

The child care subsidy represents an estimated 21 percent of child care revenues received by child care providers. In state fiscal year 2008, the estimated cost avoidance of not increasing rates is \$14.2 million, which is 4.2% of program funding. This is a .9% total impact in lost revenue growth to child care providers statewide. In state fiscal year 2009, the estimated cost avoidance of not increasing rates is \$21.3 million, which is 6.0% of program funding. This is a 1.3% total impact in lost revenue growth to child care providers statewide.

Further analysis of the effect of freezing rates on certain regions of the state may be found in the Department’s submission to the Small Business Regulatory Review Board. This document may be obtained from the <http://adminrules.wisconsin.gov> web site or by contacting Elaine Pridgen, DWD Small Business Regulatory Coordinator, at elaine.pridgen@dwd.state.wi.us or (608) 267–9403.

Fiscal Estimate

Summary

By not increasing the maximum county rates reimbursed to child care providers for the Wisconsin Shares child care subsidy program, the Department will avoid the increased cost of using the rates based on the latest provider survey. By comparing the current rates used for reimbursement versus the rates that would otherwise go into effect and then annualizing the results, it is estimated that the Department will realize about \$14,200,000 in avoided costs in direct child care subsidies on a full–year annualized basis for State Fiscal Year 2008 and \$21,300,000 in avoided costs for State Fiscal Year 2009, but current–year appropriations are still anticipated to be fully expended.

State fiscal effect

Decrease costs

Local fiscal effect

None

Long–range fiscal implications

None

Submittal of Proposed Rules to the Legislature

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

Commerce

CR 07-101

Ch. Comm 130, relating to the manufacturing investment credit.

Pharmacy Examining Board

CR 07-097

Ch. Phar 7, relating to prescription labels.

Pharmacy Examining Board

CR 07-099

Ch. Phar 7, relating to the transfer of a prescription drug by a pharmacy technician.

Revenue

CR 07-109

Ch. Tax 8, relating to liquor wholesaler warehouse facilities.

Workforce Development

CR 07-071

Ch. DWD 55, relating to child care certification.

Rule Orders Filed with the Legislative Reference Bureau

The following administrative rule orders have been filed with the Legislative Reference Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Legislative Reference Bureau at bruce.hoesly@legis.wisconsin.gov or (608) 266-7590 for updated information on the effective dates for the listed rule orders.

Government Accountability Board**CR 06-137**

An order affecting ch. ElBd 3, relating to election-day registration.
Effective 4-1-08.

**Marriage and Family Therapy, Professional
Counseling and Social Work Examining Board****CR 07-047**

An order affecting ch. MPSW 17, relating to training licenses for marriage and family therapists.
Effective 4-1-08.

**Marriage and Family Therapy, Professional
Counseling and Social Work Examining Board****CR 07-048**

An order affecting chs. MPSW 10 and 11, relating to training licenses for professional counselors.
Effective 4-1-08.

Veterans Affairs**CR 07-083**

An order affecting ch. VA 2, relating to the tuition reimbursement program.
Effective 3-1-08.

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