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Emergency Rules Now in Effect

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

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

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: EmR0801. 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 & Consumer Protection (2)

1. 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
Extension Through: May 31, 2008

2. **EmR0804** – Creating **subch. IV of ch. ATCP 161**, relating to the "buy local" grant program created under s. 93.48, Stats.

Exemption From Finding of Emergency

DATCP has general authority under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. Section 93.48 (1), Stats., specifically requires DATCP to adopt rules for the "buy local" grant program. Section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act) authorizes DATCP to adopt temporary emergency rules without the normal "finding of emergency," pending the adoption of "permanent" rules. This temporary emergency rule implements the "buy local" grant program on an interim basis, pending the adoption of "permanent" rules.

Publication Date: February 22, 2008
Effective Date: February 22, 2008
Expiration Date: May 1, 2009

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

Financial Resources for Businesses and Communities, Chs. Comm 104–135

EmR0802 – 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
Hearing Date: May 14, 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 17, 2008
Hearing Date: November 12, 2007

Government Accountability Board

EmR0803 – Repealing s. **Eth 3.01**, relating to the filing of all written communications and documents intended for the former Ethics Board; repealing s. **Eth 3.04**, relating to transcripts of proceedings before the former Ethics Board; and amending s. **EIBd 10.01**, relating to procedures for complaints with the former State Elections Board.

Finding of Emergency

The Government Accountability Board adopts this rule to clarify the complaint procedure applicable to complaints that will be filed with the Board under ethics, lobbying, contract-disclosure and campaign finance law and the separate complaint procedure applicable to complaints filed under elections law and the Help America Vote Act.

The Government Accountability Board finds that an emergency exists in the 2007 change in Wisconsin law that establishes the Wisconsin Government Accountability Board (effective January 10, 2008). Under 2007 Wisconsin Act 1, a statutory procedure or framework for investigation of complaints related to ethics, lobbying, contract disclosure and campaign finance, was established. That framework does not include the necessity of the filing of a complaint. Under the rules of the former Elections Board, Chapter EIBd 10, however, an investigation will not be commenced without the filing of a verified complaint. The Government Accountability Board finds that an emergency exists in the possible confusion that potential complainants may find in attempting to file a complaint with the Government Accountability Board and, as a result of that confusion, those complainants may be dissuaded from filing a complaint over which the Board has jurisdiction, or, because of that confusion, may fail to file that complaint in a timely fashion.

Publication Date: February 10, 2008
Effective Date: February 10, 2008
Expiration Date: July 9, 2008

Health and Family Services

*Management & Technology & Strategic Finance,
Chs. HFS 1—*

EmR0810 – Rule adopted amending ss. **HFS 10.55 (1) and 10.56 (2)**; and creating ss. **HFS 10.55 (1m) and 10.56 (2m)**, relating to fair hearings and continuation of benefits

pending the outcome of a grievance, Department review, or fair hearing under the family care program.

Finding of Emergency

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

2007 Wisconsin Act 20 eliminates entitlement to non-Medicaid eligibility for Family Care, which could result in some Family Care enrollees being determined ineligible and disenrolled from the program.

In addition, the federal Centers for Medicare and Medicaid Services (CMS) has restricted the Family Care benefit for enrollees at the non-nursing home level of care.

Currently, under ss. HFS 10.55 and 10.56, persons whose services are terminated may request a hearing and continuation of benefits during an appeal. Individuals who appeal the loss of non-Medicaid eligibility or reduction of services as a result of the restriction of the benefit for people eligible at the non-nursing home level of care will lose the appeal because the change in law and federal policy makes it clear that they are no longer entitled to those benefits. In addition, if benefits continued during an appeal, the individual would be responsible for repayment of the cost of continued services. Therefore, the right to appeal is of no real benefit.

HFS 10.56 (2) gives enrollees whose services are reduced or terminated the option to request continuation of services during a fair hearing, grievance, or Department review of the termination or reduction of services. For individuals appealing the loss of non-Medicaid eligibility, or termination or reduction of services as a result of the restriction of the benefit for people eligible at the non-nursing home level of care, continuation of services will be counter-productive to the welfare of the appellant, because the termination and reduction of benefits will have resulted from a change in law. The appellant will lose the appeal and as a result of the loss, be responsible for the cost of the continued services, which may be significant as costs could be in the thousands of dollars.

Under this emergency order, the Department is providing an exception to the right to a fair hearing and continuation of services during a fair hearing, grievance, or Department review when Family Care benefits are reduced or terminated by an act of the federal government or the state legislature and the individual whose benefits have been terminated or reduced does not dispute that he or she falls within the category of persons for whom the benefit was reduced or terminated. The Department has determined that appeals and continuation of benefits under these circumstances would be detrimental to the welfare of approximately 730 individuals and should be prevented.

Publication Date: April 7, 2008
Effective Date: April 7, 2008
Expiration Date: September 4, 2008
Hearing Date: May 12, 2008

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

Natural Resources (2)

Fish, Game, etc., Chs. NR 1—

1. Rules adopted affecting **chs. NR 19 and 20**, relating to control of fish diseases and invasive species. (DNR Order Number FH-40-07(E))

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
Extension Through: May 31, 2008

2. **EmR0808** – Rules adopted affecting **chs. NR 19 and 20**, relating to control of fish diseases and invasive species. (DNR Order Number FH-40-07A(E))

Finding of Emergency

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. 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.

This emergency rule amends the emergency rule relating to chs. NR 19 and 20 put into effect on November 2, 2007.

Publication Date: April 4, 2008

Effective Date: April 4, 2008

Expiration Date: These rules shall remain in effect only for 150 days from November 2, 2007, the effective date of Order No. FH-40-07(E), unless extended pursuant to s. 227.24 (2), Stats.

Hearing Date: May 12, 2008

Extension Through: May 31, 2008

Natural Resources

Environmental Protection – General, Chs. NR 100—

EmR0809 – Rule adopted to repeal s. NR 198.15 (2), to renumber s. NR 198.12 (6) to (10), to amend ss. NR 198.11, 198.14 (1) (e) and (f) 2., 198.23 (5) to (7), 198.33 (5), and 198.44 (5) and to create ss. NR 198.12 (6) and (7), 198.33 (6) and subch. V of ch. NR 198, relating to grants for the control of aquatic invasive species.

Finding of Emergency

The substantial increase in grant funding is a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The appropriation from which these funds are spent is a biennial appropriation, meaning that any unspent funds at the end of

the biennium automatically lapse back to the Water Resources Account of the Conservation Fund. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department's ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule's limitations. An emergency rule will help to minimize or eliminate the amount of funds that are lapsed.

Publication Date: April 7, 2008

Effective Date: July 1, 2008

Expiration Date: November 28, 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: June 7, 2008

Public Instruction (3)

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 22, 2008

Hearing Date: February 21, 2008

- EmR0801** – 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
Hearing Dates: March 18 and 21, 2008

- EmR0805** – Creating ch. PI 16, relating to four–year–old kindergarten grants.

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 4–year–old kindergarten grant program under s. 115.445, Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$3 million annually beginning in the 2008–09 school year. In order for school districts to develop application criteria and procedures in time for the program to operate in the upcoming school year, rules must be in place as soon as possible.

Publication Date: February 25, 2008
Effective Date: February 25, 2008
Expiration Date: July 24, 2008
Hearing Date: April 17, 2008

Regulation and Licensing

EmR0811 – Rule adopted amending **s. RL 16.06 (1) (a), (b) and (d)**, relating to how to use approved forms for the practice of real estate.

Finding of Emergency

The Department of Regulation and Licensing finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments into effect prior to the time the amendments would take if the agency complied with the notice, hearing and publication requirements established for rule–making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, WB–1, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing education class demonstrating the allowed means to modify

an approved form. The modified form was shown to industry stakeholders, the department’s council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule–making to prevent modification of forms such as WB–1 in the manner submitted.

Publication Date: April 16, 2008
Effective Date: April 16, 2008
Expiration Date: September 13, 2008

Revenue

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
Extension Through: May 25, 2008

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: See Section 2927, 2007 Wis. Act 20
Hearing Date: March 5, 2008

Workforce Development (3)

Family Supports, Chs. DWD 12 to 59

1. 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 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

2. **EmR0806** – Rule adopted amending s. DWD 56.08 (1) and (2) (a), (e), and (f) and repealing and recreating Table DWD 56.08, relating to child care copayments and affecting small businesses.

Finding of Emergency

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

The federal Department of Health and Human Services is requiring that Wisconsin eliminate different copayment amounts for families who receive child care services from a certified provider and families who receive child care services from a licensed provider. The change to the copayment schedule must be implemented by April 1, 2008, or Wisconsin risks losing \$82 million annually from the Child Care Development Fund.

Publication Date: February 27, 2008
Effective Date: March 30, 2008
Expiration Date: August 27, 2008
Hearing Date: April 11, 2008

3. **EmR0807** – Rule adopted amending s. DWD 56.04 (1) (a) 1., (2) (a) 1. b., and (5) (c); and repealing and recreating s. DWD 56.04 (2) (d), relating to child care enrollment underutilization.

Finding of Emergency

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

The Department projects a potential current year budget shortfall in the child care subsidy program of \$18.6 million if no corrective measures are taken. This rule will provide for more efficient use of the program's limited funding.

Publication Date: March 24, 2008
Effective Date: March 30, 2008
Expiration Date: August 27, 2008
Hearing Date: May 19, 2008

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

Pharmacy Examining Board

Subject

Revises s. Phar 7.09, relating to remote dispensing of prescription drugs and devices at certain facilities in Wisconsin.

Objective of the Rule

To establish standards for safe dispensing in remote locations, including security, accountability, pharmacist control, counseling, record keeping, and the ability to inspect, detect, and correct work.

Policy Analysis

Section Phar 7.09, relating to automated dispensing systems, provides a kind of model for machine-based remote dispensing, though it does not include a counseling requirement and will need to be broadened to accommodate systems that are operated by pharmacy professionals and other health care workers.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 450.062, Stats.

Entities Affected by the Rule

The Pharmacy Examining Board, the Wisconsin Department of Regulation and Licensing, pharmacies, pharmacists, health care workers, and facilities authorized in the Act to dispense remotely.

Comparison with Federal Regulations

None.

Estimate of Time Needed to Develop the Rule

It is estimated that 100 hours will be needed to promulgate the rule.

Regulation and Licensing

Subject

Revising ch. RL 161, relating to the rules of certification for clinical substance abuse counselors under s. RL 161.04 (3), Wis. Adm. Code.

Objective of the Rule

The objective of the proposed revision is to address the imminent cancellation of an examination used by the department to certify clinical substance abuse counselors. The department intends to eliminate the requirement that an applicant for clinical substance abuse counselor certification submit evidence to the department of the passage and successful completion of the International Certification & Reciprocity Consortium (IC&RC) case presentation method (CPM) interview and further provide the department with the capacity to approve an alternate examination instrument. The CPM is an oral examination designed by the IC&RC and administered by the Department of Regulation and Licensing.

Policy Analysis

The department's rules for certification of clinical substance abuse counselors require the completion and passage of the International Certification & Reciprocity Consortium (ICRC) "Case Presentation Method" oral examination (also referred to as the "Oral Exam"). The IC&RC, in a memorandum to member boards, which includes the Department of Regulation and Licensing, advised they were revising their written exam to include written practice elements for measurement of clinical AODA treatment skills and were discontinuing the Oral Exam as of June 1, 2008. As the department's rules specify the passage of this exam with no alternative exam specified in rule, the department must consider the elimination of the exam. The IC&RC has offered an alternative, which is to sign an indemnity agreement, which would allow member boards to continue to use the oral exam after the IC&RC's deadline date. In exchange, member boards would be bound by a confidentiality agreement (regarding examination elements), would agree to hold the IC&RC harmless on validity challenges and would provide a disclaimer to applicants that the exam is no longer recognized by the IC&RC.

Statutory Authority

Section 227.11 (2) and subchapter VII of chapter 440, Stats.

Entities Affected by the Rule

Oral examination candidates (those actively applying for certification as a clinical substance abuse counselor).

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

160 hours

Revenue

Subject

Revises ch. Tax 8, relating to wine collectors and small winery cooperative wholesalers.

Objective of the Rule

The objectives of the proposed rule are to provide for registration of wine collectors, establish standards of eligibility for registration as a wine collector, specify the form and manner of notice required for the sale of wine from one wine collector to another, and administer and enforce the statutory requirements pertaining to small winery cooperative wholesalers.

Policy Analysis

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes and court decisions. If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy.

Statutory Authority

Sections 125.03 (1) (b) and 125.545 (6) (b), Stats.

Entities Affected by the Rule

Wine collectors, as defined in s. 125.02 (23), Stats., small wineries, as defined in s. 125.545 (1) (d), Stats., and small winery cooperative wholesalers, as defined in s. 125.545 (1) (e), Stats.

Comparison with Federal Regulations

The Code of Federal Regulations, 27 CFR 31.28 states: “Any person who sells or offers for sale distilled spirits, wines, or beer, in quantities of 20 wine gallons (75.7 liters) or more, to the same person at the same time, shall be presumed and held to be a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be, unless such person shows by satisfactory evidence that such sale, or offer for sale, was made to a person other than a dealer.”

The Department’s proposed rule will provide that individuals registered as wine collectors with the Department and meeting the standards established by the rule may annually sell wine that the collector has held for at least eight years. The individual would not be required to hold a retailer’s license or wholesaler’s permit to conduct this sale in Wisconsin.

Estimate of Time Needed to Develop the Rule

The department estimates it will take approximately 200 hours to develop this rule order.

Transportation

Subject

Revises ch. Trans 206, relating to the Local Roads Improvement Program (LRIP).

Objective of the Rule

The proposed rule interprets and administers procedures for assisting in the improvement of seriously deteriorating roads under local jurisdiction, under Section 86.31, Stats. Section 86.31 has been revised in 1999 Wis. Act 9 (eff. October 29, 1999), in 2001 Wis. Act 16 (eff. September 1, 2001), in 2003 Wis. Act 33 (eff. July 26, 2003), and in 2005 Wis. Act 25 (eff. July 27, 2005).

Policy Analysis

Section 86.31 (3g), Stats., authorizes a discretionary allocation from LRIP to fund a competitive, county highway improvement program, similar to the existing discretionary program for high-cost town roads. It specified that eligible projects must have a total estimated cost of at least \$250,000. The current LRIP matching requirements will apply to this component. The proposed rule will create procedures and criteria for the selection of projects.

Section 86.31 (3r), Stats., authorizes a discretionary allocation from LRIP to fund a competitive, municipal street improvement program, similar to the existing discretionary programs for high-cost town roads and county highways. It specified that eligible projects must have a total estimated cost of at least \$250,000. The current LRIP matching requirements will apply to this component. The proposed rule will create procedures and criteria for the selection of projects.

The proposed rule will modify s. Trans. 206.03 (14) to indicate, “...This subsection does not apply to recipients of TRIP-D, or MSIP-D allocations.”

Currently, s. 86.31, Stats., requires that all LRIP projects be awarded based on competitive bids and be awarded to the

lowest responsible bidder. However, it also makes provision for any city, village, or town that does not receive a responsible bid on a project to contract with the county for the improvement. The proposed rule incorporates the new bidding requirements for town projects including the criteria that specify when a project may be awarded to a county and criteria for the selection of the lowest responsible bidder. 1999 Wis. Act 9 deletes the above provision for town projects only and requires an amendment to the rule to incorporate new bidding requirements for town projects. It also requires the inclusion of criteria and procedures for determining when a contract for a project under the town road improvement programs may be awarded to a county, including, at a minimum:

- A requirement that a written and sealed pre-bid estimate of the cost of the improvement, including the source of the estimate, be prepared before the opening of the bids.
- A requirement that all bids may be rejected and the contract awarded to a county for the improvement if the lowest bid exceeds the cost of the cost estimate by at least 10% and the town board notifies the lowest two bidders or, if only one bid was received, the single bidder, to provide information on the accuracy of the cost estimate.
- A requirement that the amount of the contract with a county for the improvement be at least 10% below the lowest bid received for the improvement.
- A provision that permits re-bidding if the amount of the proposed contract with a county for the improvement is less than 10% below the lowest bid received for the improvement.

The amendment above relating to bidding requirements is specific to town projects only and is only valid when a town rejects a bid based on price.

Currently, s. 86.31, Stats., allows county trunk highway improvements to be performed by county highway departments subject to restrictions. The proposed rule specifies the criteria to determine when it will be cost-effective for a county to do the work, and procedures for review of disputes relating to whether proposed work to be done by county highway departments is cost-effective.

1999 Wis. Act 9 eliminated the provision that requires each county highway improvement district committee to ensure compliance with the provisions related to the amount of work performed by county highway departments, and now requires these committees to:

- Review each project proposed to be done by a county highway department and determine if it would be cost effective for the county highway department to perform the work; and
- Approve the proposed project before its being performed by the county highway department.

1999 Wis. Act 9 modified the membership of county highway improvement district committees to specify that they shall be composed of the highway commissioners from each county in the district, instead of not more than five county executives, or county board chairpersons in counties that do not have county executives, or their designees.

The 2004–2005 LRIP Study Group recommended a number of changes to the local roads improvement program. The proposed rule reflects these current business rules. Specifically, these additions include:

- Defining and providing guidance regarding programming caps implemented under TRIP and MSIPLT: The number of Town Road and Municipal Street Improvement

Program projects for cities and villages with less than 20,000 in population is capped each biennium at one-half of the number of eligible municipalities within a county. One additional project is allowed for any county with an odd number of municipalities. The policy encourages a competitive, needs-based approach for selecting projects, resulting in larger and fewer TRIP and MSIPLT projects.

- **Sunset on Funds:** This policy is intended to ensure the timely use of program funds. All entitlement and discretionary funds must be used within three biennia. All projects programmed with 2004–2005 funds (or prior biennia) must be reimbursed by the end of state fiscal year 2009 (June 30, 2009). All projects programmed with 2006–2007 funds must be reimbursed by the end of state fiscal year 2011 (June 30, 2011).
- **Substitutions:** Add language specifying that only one substitution will be allowed for each entitlement project.
- **Program Review and Program Sanctions:** Add definitions for program review and program sanctions, describe the program review process and specify program sanctions agreed to by the LRIP Study Committee.
- **Clarify s. Trans 206.03 (8) (b) and repeal s. Trans 206.03 (8) (c)** to reflect a standard administrative reimbursement (currently, the Department uses 5%).

Several other additions and modifications to the administrative rule are recommended to maintain the integrity of the program's initial intent, which is to improve seriously deteriorating roads. These include:

- Adding language to specify programming caps will be applied under CHIP (the methodology will need to be determined, since the methodology applied to TRIP and MSIPLT will not work for this component).
- Clarifying the definition for "Eligible Project" in s. Trans 206.02 (17) to reflect that improvements should be

complete projects that result in a final improvement with a 10-year design life, and specify that pulling out a part or parts of a complete improvement project is not allowed under the program.

- Clarifying s. Trans. 206.03 (9) with regard to real estate transactions to state that utility costs associated with real estate transactions (such as relocation of utilities) are not eligible costs.

Other updates may be needed, including:

- Updating s. Trans 206.03 (10) (b) as it relates to engineering certification to reflect increased project costs to correspond with the applicable statute.

Statutory Authority

Section 86.31, Stats.

Entities Affected by the Rule

In addition to WisDOT, the following entities may be affected:

- Wisconsin Counties Association
- Wisconsin County Highway Association
- Wisconsin Towns Association
- League of Wisconsin Municipalities
- Wisconsin Alliance of Cities
- Wisconsin Transportation Builders Association

Comparison with Federal Regulations

No federal regulations govern the Local Roads Improvement Program.

Estimate of Time Needed to Develop the Rule

Approximately 200 hours.

Submittal of Rules to Legislative Council Clearinghouse

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

Administration

CR 08–033

On April 14, 2008, the Service Award Board of the Department of Administration submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises ch. VFF–EMT 1, relating to the Service Award Program for volunteer fire fighters, first responders and emergency medical technicians.

Agency Procedure for Promulgation

The organizational unit responsible for the promulgation of the proposed rule is the Service Award Board. The Board will conduct a public hearing on May 19, 2008.

Contact Information

If you have any questions regarding the proposed rule, please contact:

Terri Lenz
Department of Administration
Phone: (608) 261–6580
Email: terri.lenz@wisconsin.gov

Agriculture, Trade and Consumer Protection

CR 08–027

On April 10, 2008, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises ch. ATPC 123, relating to electronic communication services.

Agency Procedure for Promulgation

A public hearing is scheduled for May 28, 2008. The Department's Division of Trade and Consumer Protection is primarily responsible for this rule.

Contact Information

If you have questions, you may contact:
Michelle Reinen
Phone: (608) 224–5160

Commerce

Elevators, Escalators and Lift Devices, Ch. Comm 18

CR 08–030

On April 15, 2008, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises chs. Comm 5, 18 and 21, relating to technical requirements for conveyances and licensing of installers of residential conveyances.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for May 15, 2008. The Department of Commerce is primarily responsible for this rule.

Contact Information

Larry Swaziek, Program Manager
Phone: (608) 267–7701
Email: larry.swaziek@wisconsin.gov

Commerce

Boilers and Pressure Vessels, Ch. Comm 41

CR 08–028

On April 11, 2008, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises chs. Comm 23, 41 and 45, relating to boilers and pressure vessels and mechanical refrigeration.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for May 21, 2008. The Department of Commerce is responsible for promulgation of this rule.

Contact Information

Joe Hertel, Program Manager
Phone: (608) 266–5649
Email: joe.hertel@wisconsin.gov

Commerce

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

CR 08–031

On April 15, 2008, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates ch. Comm 132, relating to dairy manufacturing facility investment credits.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for May 14, 2008. The Division of Business Development is primarily responsible for this rule.

Contact Information

Sam Rockweiler
 Phone: (608) 266-0797
 Email: srockweiler@commerce.state.wi.us

Employee Trust Funds
CR 08-026

On April 8, 2008, the Department of Employee Trust Funds submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order amends s. ETF 10.08 (2) (b) 4. and creates s. ETF 50.30 (4) relating to termination of employment and administrative leave of absence.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 22, 2008, at 1:00 p.m. in the downstairs Conference Room GB at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

The Department's Disability Programs Bureau is primarily responsible for this rule.

Contact Information

David H. Nispel, Deputy Chief Counsel
 Email: david.nispel@etf.state.wi.us
 Phone: (608) 264-6936

Insurance
CR 08-032

On April 15, 2008, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises ss. Ins 3.455, 3.46 and 3.465, relating to long-term care insurance and long-term care insurance partnership policies and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for May 12, 2008.

Contact Information

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:

Julie E Walsh
 OCI Legal Unit
 Phone: (608) 264-8101
 Email: julie.walsh@wisconsin.gov

Transportation
CR 08-029

On April 11, 2008, the Department of Transportation

submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises chs. Trans 137, 138 and 139, relating to motor vehicle dealer franchise operations, record keeping and trade practices.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for May 13, 2008. The Division of Motor Vehicles, Bureau of Vehicle Services is responsible for promulgation of the rule.

Contact Information

Carson Frazier
 Bureau of Vehicle Services
 Phone: (608) 266-7857
 Email: carson.frazier@dot.state.wi.us

Workforce Development
Family Supports, Chs. DWD 12-59
CR 08-034

On April 15, 2008, the Department of Workforce Development submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises ch. DWD 12, relating to W-2 good cause exceptions and notice of payment reductions and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 15, 2008. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Family Supports.

Contact Information

Elaine Pridgen
 Phone: (608) 267-9403
 Email: elaine.pridgen@dwd.state.wi.us

Workforce Development
Family Supports, Chs. DWD 12-59
CR 08-035

On April 15, 2008, the Department of Workforce Development submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises s. DWD 56.04, relating to child care enrollment authorization and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 19, 2008. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Family Supports.

Contact Information

Elaine Pridgen
 Phone: (608) 267-9403
 Email: elaine.pridgen@dwd.state.wi.us

Rule-Making Notices

Notice of Hearing

Administration

CR 08-033

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1), 16.705 (1) and (2), Stats., the Department of Administration will hold a public hearing on the Department's rulemaking order amending Chapter VFF-EMT 1, Wis. Adm. Code, relating to the volunteer fire fighter and emergency medical technician service award program.

Hearing Information

<u>Date and Time</u>	<u>Location</u>
May 19, 2008	Wis. Administration Bldg.
Monday	101 E. Wilson Street
1:00 p.m.	Conference Room 4B (4 th Floor)
	Madison, Wisconsin

Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, should be directed to: Terri Lenz, Wisconsin Department of Administration, Division of Enterprise Operations, P.O. Box 7867, Madison, WI 53707-7867, or by calling (608) 261-2298, fax at (608) 267-0600 or by email at terri.lenz@wisconsin.gov. Comments may also be submitted via the Wis. Administrative Rules Website at <http://adminrules.wisconsin.gov>. Written comments must be received by May 28, 2008, to be included in the record of rule-making proceedings.

Agency Contact Person

Terri Lenz
 Division of Enterprise Operations
 P.O. Box 7867
 Madison, WI 53707-7867
 Phone: (608) 261-2298
 Fax: (608) 267-0600
 Email: terri.lenz@wisconsin.gov

Copies of Proposed Rule

A copy of the rule and the full fiscal estimate may be obtained upon request from Terri Lenz, Wisconsin Department of Administration, Division of Enterprise Operations, P.O. Box 7867, Madison, WI 53707-7867, or by calling (608) 261-2298, fax at (608) 267-0600 or by email at terri.lenz@wisconsin.gov.

Analysis Prepared by the Dept. of Administration

The Department intends to promulgate a rule as required by Act 142 making changes to the Service Award Program for volunteer fire fighters, first responders and emergency medical technicians. The Service Award Board (SAB) was created by 1999 Wisconsin Act 105 consists of an eight-member board appointed by the Governor. The program intent is to assist in the recruitment and training of

volunteer fire fighters and emergency medical technicians. The state will annually match the municipal contributions up to \$2 million. Currently there are 203 volunteer departments participating in the program covering 5,773 fire fighters and emergency medical technicians.

Act 142 amends the length of service award program by extending the benefits of the program to first responders and providing that a county may participate in the program as well as a city, village or two. The act also removes the requirement that a volunteer must have served for at least five years before a local government body may purchase additional years of service.

Statutes interpreted

Sections 16.004 (1), 16.25 (2), (3), (4) and (5), Stats.

Statutory authority

Sections 16.004 (1), 16.25 (2), (3), (4) and (5), Stats.

Explanation of agency authority

Wisconsin Act 142 to amend ss. 16.25 (title), (1) (a), (c), (d), (2), (3) (a) to (k), and (5); and to create 16.25 (1) (am) of the statutes; relating to the Volunteer Fire Fighter and Emergency Medical Technician Service Award Program.

Related statute or rule

Administrative rule Chapter VFF-EMT 1.

Plain language analysis

The program was created by 1999 Wisconsin Act 105 and is governed by an eight-member board appointed by the Governor. The program intent is to assist in the recruitment and training of volunteer fire fighters, first responders and emergency medical technicians. The state will annually match the municipal contributions up to \$2 million. Currently there are 203 volunteer departments participating in the program covering 5,773 fire fighters and emergency medical technicians.

Act 142 made changes to various statutes governing the program. They consist of:

- Renaming the Volunteer Fire Fighter and Emergency Medical Technician Service Award Program to the Service Award Program;
- Renaming the Volunteer Fire Fighter and Emergency Medical Technician Service Award Board to the Service Award Board;
- Extending the benefits of the program so first responders are eligible participants;
- Adding that a county may participate under the definition of a municipality;
- Eliminating the requirement that a volunteer have at least 5 years of experience before prior year service can be purchased;
- A volunteer who has not met all of the vesting requirements shall have their account closed, not forfeited;
- Include the provision that the beneficiary of a volunteer who is killed while actively engaged in the rendering of volunteer fire fighting, first responder, or emergency medical technical service be paid the service lump sum; and
- Adds the provision that the volunteer must meet any other program requirements established by the municipality.

Comparison with federal regulations

This proposed rule is specific to the State of Wisconsin Service Award Program law and is completely separate from, and unaffected by, federal regulations.

Comparison with rules in adjacent states.

Michigan: The department is unaware of and was unable to locate any rules in this state pertaining to this subject.

Minnesota: Minnesota does have a program however it is decentralized. Each department participates independently and the programs differ.

Illinois: The department is unaware of and was unable to locate any rules in this state pertaining to this subject.

Iowa: The department is unaware of and was unable to locate any rules in this state pertaining to this subject.

Summary of factual data and analytical methodologies

2005 Wisconsin Act 142 requires the department to amend this rule.

Initial Regulatory Flexibility Analysis

The proposed rule makes changes to the program as prescribes in Wis. Act 142 and allows local units of governments, counties and first responders to be eligible to participate under the changes enacted by Act 142 to allow additional volunteers to become eligible to participate in the program.

There is no effect on small business.

Fiscal Estimate**State fiscal effect**

Increase existing appropriations. The increase in costs cannot be absorbed within the agency's budget.

Local fiscal effect

Indeterminate

Types of local government units affected

Towns, villages, cities, counties

Fund sources affected

GPR

Long-range fiscal implications

None

Notice of Hearing**Agriculture, Trade and Consumer Protection****CR 08-027**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed amendment to chapter ATCP 123, Wis. Adm. Code, relating to electronic communication services.

Hearing Information**Wednesday, May 28, 2008**

9:00 a.m. to 11:00 a.m.

Dept. of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room (CR-106)

Madison, Wisconsin, 53718-6777

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by Thursday May 15, 2008, by writing to Michelle Reinen, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-5160.

Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Submission of Written Comments

DATCP will hold a public hearing at the time and place shown above. DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until Friday, June 13, 2008 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to michelle.reinen@wi.gov or online at: <https://apps4.dhfs.state.wi.us/admrules/public/Home>

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@wi.gov or by telephone at (608) 224-5039.

Copies of Proposed Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-5160 or emailing michelle.reinen@wi.gov. Copies will also be available at the hearings. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers rules to protect consumers against unfair sales and billing practices related to telecommunications services, cable television services and satellite television services. Current rules are contained in ch. ATCP 123, Wis. Adm. Code.

This rule updates current rule coverage to reflect new service delivery methods and "bundling" practices, and to conform to law changes enacted in 2007 Wis. Act 42. This rule maintains current protection for video service subscribers, regardless of the method used to deliver the video service.

Statutes interpreted

Sections 100.20 and 100.207, Wis. Stats.

Statutory authority

Sections 93.07 (1), 100.20 (2), 100.207 (6) (e) and 100.209 (3), Wis. Stats.

Explanation of agency authority

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has authority, under s. 100.207, Stats., to regulate sales and billing practices related to telecommunications. DATCP also has broad authority, under s. 100.20, Stats., to regulate methods of competition and trade practices in business.

Related rules or statutes

The Wisconsin public service commission (PSC) regulates telecommunications service providers to the extent provided under chapter 196, Stats. The department of financial institutions (DFI) and local municipalities regulate video service providers to the extent provided in ch. 66, Stats.

2007 Wisconsin Act 42 changed the way that Wisconsin regulates cable television and other video services. The act provided for state, rather than local, franchising of video service providers. The act also changed prior definitions, and added a new definition of "video services." This rule incorporates new statutory definitions, in order to maintain the coverage of current rules.

Rule background

Current DATCP rules regulate unfair sales and billing practices related to telecommunications, cable television and satellite television provided to consumers on a subscription basis. The current rules do all of the following:

- Require providers to disclose subscription terms and conditions.
- Prohibit billing for unordered services.
- Prohibit the imposition of price increases without prior notice and opportunity to cancel.
- Prohibit unfair “negative option” billing practices.

Since DATCP adopted the current rules, business practices and technology have changed. For example, video services can now be delivered over telephone lines. Providers now offer “bundled” service packages that may include local telephone, long-distance telephone, wireless telephone, video, internet and other services. Consumers may receive a number of these services on one electronic device, and may receive one bill for all of the “bundled” services.

This rule updates current rule coverage to ensure that protection is afforded to video service consumers on an equal basis, regardless of the technology or method used to deliver the service. This rule does not make major changes in rule content, but does make minor content adjustments to address new service delivery methods and “bundling” practices.

Plain language analysis

This rule does all of the following:

- Retitles ch. ATCP 123 from “Telecommunications and Cable Television Services” to “Electronic Communication Services.”
- Defines “electronic communication service” to include telecommunications service, video service, broadband internet service and satellite television service provided on to consumers on a subscription basis. “Electronic communication service” also includes any good or service that a subscriber is required to purchase from the service provider in order to obtain the electronic communication service.
- Defines “video programming” and “video service,” consistent with current statutes.
- Changes “telecommunications service or cable television service” where it appears in the main body of the rule to “electronic communication service.”
- Changes other words in the rule text to reflect recent statutory definition changes (2007 Wisconsin Act 42).

Comparison with federal regulations

Congress and the federal communications commission have significantly reduced federal regulation of telecommunications service and video services. The federal government has left, to state governments, much of the responsibility for regulating the business practices of service providers.

Comparison with rules of adjacent states

No surrounding states regulate the subscription and billing practices of telecommunication and video service providers in a manner similar to Wisconsin. The surrounding states approach the regulation of this industry by focusing on specific trade practices, such as the unauthorized switching of long-distance services or consumer protection for users of coin-operated phones. Wisconsin is the only state that has comprehensive regulation providing standards for

subscription and billing practices that apply equally to all competing providers.

Summary of factual data and analytical methodologies

This rule does not depend on any complex analysis of data. This rule merely updates current rules to address changes in business practices and technology, and to incorporate new definitions created under 2007 Wisconsin ACT 42.

Initial Regulatory Flexibility Analysis

This rule will have few, if any, negative impacts on business. This rule simply updates the definitions and coverage of current rules to prevent the erosion of current consumer protection regulations. Some video service providers now use new electronic delivery methods that are not covered by current rules. This rule applies existing consumer protection standards to those new delivery methods, so that consumers will continue to enjoy protection. This rule will help maintain fair competition between video service providers, regardless of the delivery method used. None of the video service providers using the new electronic delivery methods are small businesses.

Fiscal Estimate

This rule will have no significant fiscal impact on DATCP or local units of government.

Notice of Hearing**Commerce****Elevators, Escalators and Lift Devices, Ch. Comm 18****CR 08-030**

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (15) (j), 101.17, 101.63 and 101.981 to 101.986, Stats., the Department of Commerce will hold a public hearing on proposed rules under chapters Comm 5, 18 and 21, relating to the technical requirements for conveyances and licensing of installers of residential conveyances.

Hearing Information

The public hearing will be held as follows:

Date and Time:

May 15, 2008

Thursday

10:00 a.m.

Location:

Thompson Commerce Bldg.

Third Floor Conf. Room #3B

201 W. Washington Avenue

Madison, Wisconsin

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 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. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until May 29, 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. Written comments should be submitted to Larry Swaziek, at the Department of Commerce, P.O. Box

2689, Madison, WI 53701-2689, or Email at lswaziek@wisconsin.gov.

Copies of Proposed Rule

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at roberta.ward@wisconsin.gov, or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Agency Contact Person

Larry Swaziek, Program Manager, (608) 267-7701, email: larry.swaziek@wisconsin.gov.

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 Email at carol.dunn@wisconsin.gov.

Analysis Prepared by Department of Commerce

Statutes interpreted

Sections 101.02 (15) (h) to (j), 101.17, 101.63 (1), and 101.981 to 101.985, Stats.

Statutory authority

Sections 101.02 (15) (h) to (j), 101.17, 101.63 (1), and 101.981 to 101.985, Stats.

Related statute or rule

Chapters Comm 60 to 66, Wisconsin Commercial Building Code

Chapters Comm 20 to 25, Wisconsin Uniform Dwelling Code

Explanation of agency authority

Under the authority of ss. 101.17, 101.63 and 101.982, Stats., the Department has the authority to promulgate rules for the safe installation and operation of conveyances (elevators, escalators and lift devices). Under the authority of ss. 101.17, 101.983 and 101.988, Stats., the Department has the authority to promulgate rules for required permits, inspection and enforcement of the technical standards. Under the authority of ss. 101.984 and 101.985, Stats., the Department has the authority to develop licensing and permitting requirements related to the installation of conveyances.

Plain language analysis

The primary revisions to chapter Comm 18 are to adopt the most current editions of the ASME A17.1, Safety Code for Elevators and Escalators and the ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts relating to the regulation of conveyances. The rules under this chapter are also being updated to require elevators and dumbwaiters serving dwelling units to comply with the technical requirements established in chapter Comm 18, as authorized by recent legislation. The proposed rules contain a number of modifications to the technical requirements within these standards, reorganization of current requirements and editorial changes. The following is a summary of the major rule changes to these chapters:

- (a) The definition of “conveyance” is included under chapters Comm 5 and 18 and the definition excludes platform lifts and stairway chairlifts from regulations when they serve private dwelling units. A definition of “dwelling unit” has also been included under Comm 18. [See Comm 5.003 (10g) and Comm 18.1004 (6) and (10)]
- (b) The licensing requirements for conveyance contractors and installers in chapter Comm 5 are being updated to require such licensure for the installation of elevators and dumbwaiters serving dwelling units. [See Comm 5.003 (10g), 5.991, 5.998 and 5.999]
- (c) The rules have been modified to differentiate between conveyances installed in public buildings and places of employment and to specifically identify those conveyances that will be included for code application when they are installed in dwelling units. [See Comm 18.1002 (1) (b)]
- (d) Chapter Comm 18 has been modified in numerous places to use the term “conveyances” in place of the terms “elevators, escalators and lift devices.” [See Comm 18.1008, 18.1009, 18.1013, 18.1014 and 18.1015]
- (e) A requirement will be created to indicate that ASME A17.1 section 5.3 applies to elevators serving dwelling units, except for those private residence elevators installed in public buildings and places of employment prior to July 1, 2002. The requirements for private residence inclined elevators as specified under ASME A17.1 section 5.4 will now apply to dwelling units and the current requirement indicating that ASME A17.1 section 5.4 requirements do not apply will be repealed. [See Comm 18.1705 (2) and 18.1705 (3)]
- (f) The plan review requirements will be the same for elevators or dumbwaiters installed in public buildings, places of employment or serving dwelling units, except plans submitted for elevators or dumbwaiters serving dwelling units will not be required to contain the stamp of the supervising building designer. [See Comm 18.1013 (2) (b) 6.]
- (g) Periodic inspection intervals will be the same for elevators or dumbwaiters installed in public buildings, places of employment or serving dwelling units, which will require an annual routine inspection and an annual permit to operate. [See Comm 18.1014 and 18.1708]
- (h) The wording under ASME A17.1 section 2.27.3 relating to Phase I emergency recall operation has been clarified to require only those elevators serving a specific lobby to be recalled when the fire alarm initiating device serving that lobby is activated. [See Comm 18.1702 (10)]
- (i) The 2007 edition of the ASME A17.1 Safety Code for Elevators and Escalators and the 2005 edition of the ASME 18.1 Safety Standard for Platform Lifts and Stairway Chairlifts will be adopted by reference. [See Comm 18.1005]
- (j) The periodic inspection and tests of hydraulic elevators, specifically, the relief valve setting and system pressure test and the hydraulic cylinders and pressure piping tests will apply to hydraulic elevators installed prior to January 1, 1994 and that have below ground cylinders. [See Comm 18.1708 (3) and (11) (a)]
- (k) In accordance with the 2005 Wisconsin Act 456, routine inspections and tests of stairway chairlifts installed in public buildings, places of employment will be made at

intervals not longer than one year. [See Comm 18.1810 (2)]

- (L) A number of Wisconsin modifications relating to the height of grab rails in platform lifts have been eliminated since the ASME A18.1 Standard now covers this requirement. [See Comm 18.1802 (1) (c) and (e) 2.]
- (m) Create rules to cover special platform lifts for use in courtrooms. [See Comm 18.1801 and 18.1820]
- (n) Create a requirement under the Uniform Dwelling Code (UDC) that will reference chapter Comm 18 when an elevator or dumbwaiter is installed that will serve a dwelling unit covered under the UDC. [See Comm 21.115]

Comparison with federal regulations

There are no existing or proposed federal regulations that address or impact the activities to be regulated by this rule.

Comparison with rules in adjacent states

An Internet-based search found that all of the adjacent states adopt by reference certain editions of the ASME A17.1, Safety Code for Elevators and Escalators and the ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts. The adjacent states also create amendments to the adopted standard similar to Wisconsin's administrative rules relating to elevators, escalators and lift devices.

The following are the adjacent states and the edition of the ASME coded they adopt and enforce:

- (a) The Illinois Office of the State Fire Marshal, Division of Elevator Safety is responsible for implementing the Elevator Safety and Regulation Acts. The 2004 edition of the ASME A17.1, Safety Code for Elevators and Escalators, the 2005 A17.1a, Addenda and the 2005 edition of the ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts are both adopted by reference.
- (b) The Iowa Department of Workforce Development, Division of Labor Services, Elevator and Escalators oversees that all elevators, escalators, dumbwaiters and related equipment must comply with all rules and statutes. The 2004 edition of the ASME A17.1, Safety Code for Elevators and Escalators, the 2003 edition of the ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts are both adopted by reference.
- (c) The Minnesota Department of Labor and Industry is responsible for enforcing minimum requirements relating to building codes, including elevators and related devices. The requirements include the design, construction, installation, alteration, repair, removal and operation and maintenance of passenger elevators. The 2004 edition of the ASME A17.1, Safety Code for Elevators and Escalators and the 2005 edition of the ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts are both adopted by reference.
- (d) The Michigan Department of Labor and Economic Growth is responsible for issuing permits, the examination and licensing of elevator journeypersons and contractors, inspecting of elevators, escalators and dumbwaiters, complaint investigations and reporting elevator accidents. The state rules establish, for the protection of the general public, minimum safety requirements for inspection, construction, installation, alteration, maintenance, repair and operation of elevators. The 2004 edition of the ASME A17.1, Safety Code for Elevators and Escalators and the 2003 edition

of the ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts are both adopted by reference.

Summary of factual data and analytical methodologies

The primary methodology for updating the Wisconsin Administrative Code, chapter Comm 18 relating to conveyances has been a review and assessment of the latest editions of the national technical standards for the design and construction of conveyances, which serves as the basis for chapter Comm 18. The review and enforcement requirements for elevators and dumbwaiters serving private dwelling units were also included under chapter Comm 18 to be consistent with recent legislation. Staff prepared a comprehensive comparison of the changes in the latest editions of the ASME standards to the editions currently adopted under Comm 18. The Department's review and assessment process involved the participation of the Conveyance Safety Code Council. The members of that Council represent many stakeholders involved in the conveyance industry, including manufacturers, inspectors, building contractors and the general public as users of the conveyances. (A listing of the Conveyance Safety Code Council is provided at the end of this analysis.)

The Department believes that the national model codes reflect current societal values with respect to protecting public health, safety and welfare in the design, construction, use, operation and maintenance of conveyances in commercial and residential buildings. The ASME standard setting committees use a process open to all parties in the development of their codes. More information on the development of these standards may be obtained from the ASME web site at: www.asme.org

Analysis and supporting documents used to determine effect on small business

The Department used the Conveyance Safety Code Council to gather and analyze information on potential impacts in complying with both the technical and administrative requirements of the codes. As authorized in recent legislation, elevators and dumbwaiters that serve dwelling units will be required to comply with the inspection and permit requirements similar to those for elevators and dumbwaiters installed in commercial buildings. Small businesses that install elevators and dumbwaiters in commercial facilities will be familiar with the inspection and permit processes that will now be required for installations serving dwelling units.

In addition to posting rule development and council activities on the department's web site, the department offers an Email subscription service, which is available to all small businesses. This service provides Email notification of council meetings, meeting, agendas and council meeting progress reports so small businesses can follow proposed code changes.

Adopting the most current edition of the 2007 edition of the ASME A17.1 and 2005 edition of the ASME A18.1 national standards will not impose a significant impact on small businesses selling conveyances or providing services for conveyances.

It is anticipated this requirement will not have a significant impact on small businesses installing elevators and dumbwaiters.

Initial Regulatory Flexibility Analysis

Summary

The Department believes the rules will not increase the effect on small businesses from what the current rules impose

on them. An economic impact report has not been required pursuant to s. 227.137, Stats.

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

Small business selling or providing services on conveyance equipment or small businesses that own buildings with conveyances will be affected by the proposed rules. However, based on the minimal costs to provide the safety features of the Firefighters' Emergency Operation (FEO) key switch and to test hydraulic elevators with below ground cylinders, the Department believes there will be no significant impact on small businesses. The following is a summary of the proposed changes:

- a) The proposed rules update chapter Comm 18 by adopting the most current edition of the ASME A17.1, Safety Code for Elevators and Escalators and ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts. It is important for all elevator companies to be designing and providing services to the general public using the most current edition of the national safety standards.
- b) When an elevator is added to a building or an existing elevator has certain alterations, the FEO key will be required. The cost of the key per elevator and per machine room is approximately \$45 and approximately \$60 per hour for installation. The typical installation time is one hour. It is important that elevator companies provide the same key throughout the building to help ensure the safety of firefighters and building occupants should fire or other emergencies occur.
- c) The annual test for hydraulic elevators with below ground cylinders is approximately \$500 per elevator. If oil is leaking from these below ground cylinders and not corrected, the safety of the riding public could be jeopardized.

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

The rules create a new form for reporting of 5-year safety tests on elevators. The new form helps simplify the process for reporting the testing results.

Types of professional skills necessary for compliance with the rules.

For any small business installing, repairing or maintaining conveyances, the individuals providing these services must be licensed as specified under chapter Comm 5.

Rules have a significant economic impact on small businesses?

No.

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.

Fiscal Estimate

Summary

1. **Switch key** –When an elevator is added to a building or an existing elevator has certain alterations or renovations done, the universal Firefighter's Emergency Operation (FEO) key for fire safety purposes would be required on these elevators and on all other elevators in the building. Each switch key or tumbler assembly costs about \$45, and each elevator and each machine room requires a switch key. The estimated cost for labor is about \$60 an hour, and the typical installation time is one hour. The estimated cost to key a single elevator would be about \$150. For a building with six elevators and two machine rooms, the estimated cost to key all the same would be about \$500. This requirement would help ensure the safety of firefighters and building occupants should fire or other emergencies occur.
2. **Annual tests for hydraulic elevators with below ground cylinders** – Currently, the Wisconsin code requires annual relief valve setting and system pressure tests for hydraulic elevators installed before January 1975 with below ground cylinders. The proposed rules would align with the national elevator code and require the testing of below ground cylinders and piping installed between January 1975 and January 1994. The purpose of the tests is to determine if the hydraulic cylinders are operating properly to ensure safety for people using the elevators and if any oil is leaking from the cylinders. The estimated cost to perform a routine relief valve test is about \$500 an elevator. Between January 1975 and January 1994, there were about 3,700 hydraulic elevators installed in Wisconsin with below ground cylinders. This testing requirement may affect some state of Wisconsin-owned buildings. The estimated cost for expanding the requirement to 1994, however, would be minimal for these state-owned buildings because the annual elevator maintenance contracts include performing this test. Local governments also will be impacted; however, it is most likely that the majority of hydraulic elevators installed in local government buildings in Wisconsin also are covered by annual maintenance contracts.
3. **One- and 2-family dwellings as per WI Act 456** – The proposed rules will require permits, plan reviews and inspections for elevators and dumbwaiters installed in one- and 2-family dwellings. The department believes, however, that the cost impact will not be more than created by the 2005 Wisconsin Act 456.

State fiscal effect

None

Local government fiscal effect

Mandatory increase in costs.

Types of local governmental units affected

Towns, villages, cities, counties, school districts, WTCS districts.

Fund sources affected

PRO

Long-range fiscal implications

None known

Notice of Hearing

Commerce

Boilers and Pressure Vessels, Ch. Comm 41

CR 08-028

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (15) (h) to (j) and 101.17, Stats., the Department of Commerce will hold a public hearing on proposed rules revising chs. Comm 23, 41 and 45, relating to boilers and pressure vessels and mechanical refrigeration.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
May 21, 2008	Thompson Commerce Bldg.
Wednesday	Third Floor Conf. Room #3C
10:00 a.m.	201 W. Washington Avenue
	Madison, Wisconsin

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 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. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until June 4, 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. Written comments should be submitted to Joe Hertel, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at joe.hertel@wisconsin.gov.

Copies of Proposed Rule

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at roberta.ward@wisconsin.gov, or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Agency Contact Person

Joe Hertel, Program Manager, joe.hertel@commerce.wi.gov, (608) 266-5649.

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 Email at carol.dunn@wisconsin.gov.

Analysis Prepared by Department of Commerce

Statutes interpreted

Sections 101.02 (15) (h) to (j) and 101.17, Stats.

Statutory authority

Sections 101.02 (15) (h) to (j) and 101.17, Stats.

Related statute or rule

Chapters Comm 60 to 66, Wisconsin Commercial Building Code

Chapters Comm 20 to 25, Wisconsin Uniform Dwelling Code

Explanation of agency authority

Section 101.02 (15) (h) to (j), Stats., grants the Department of Commerce general authority for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for the construction, repair and maintenance of public buildings and places of employment. Section 101.17, Stats., indicates that machines and boilers cannot be installed or used in Wisconsin unless they comply with the rules of the department.

Plain language analysis

Chapter Comm 41 currently contains the minimum safety standards for the design, construction, installation, operation, inspection, testing, maintenance, repair and alteration of boilers and pressure vessels installed in public buildings and at places of employment. The proposed revisions to chapter Comm 41 bring the state boiler and pressure vessel code up to date with current technology and nationally recognized standards and clarify existing rules. The proposed revision in chapter 45 clarifies the requirement for mechanical relief discharge piping. The following is a summary of the major proposed changes to this chapter:

- Modify the scope of chapter Comm 41 to include equipment covered by this code and installed at one- or 2-family dwelling units and include a cross-reference to Comm 41 from the Uniform Dwelling Code. [Comm 23.04 (4), 41.02 (1), 41.16 (1) (b) 2., 41.16 (3) (b), 41.18 (1) (o), and 41.24 (1) (b)]
- Define solid fuel-fired water-heating appliances to include any equipment that heats water by burning solid fuels for the purpose of providing space or process heating. The rules will also permit a manual solid-fuel feed system to be converted to an automatic feed system. [Comm 41.04 (38) and 41.49]
- Adopt by reference the most current edition of the national standards relating to boilers and pressure vessels and include correct cross-references to these standards. [Comm 41.10 (2), Comm 41.91 (1) and Comm 41.92 (2) (a)]
- Update the department contact information in several informational notes. [Comm 41.05 Note 2, Comm 41.16 (1) (a) Note, Comm 41.23 (2) (a), Comm 41.41 (2) (a) Note, and Comm 41.48 Note]
- Clarify the requirements relating to temperature controls for automatically-fired hot water boiler or a system of commonly connected hot water heating boilers. [Comm 41.29 (2) (b)]
- Include requirements that a piping installer must notify the certified inspector before starting construction of a power piping system, and give the inspector a minimum of 5 business days notice to schedule the inspection. [Comm 41.16 (2) (c) and 41.41 (2) (c)]
- Eliminate the testing and maintenance requirements for historical boilers since the national standard that

includes these requirements will be adopted by reference. [Comm 41.92]

- h. Clarify that mechanical refrigeration relief discharge piping must be compatible with the refrigerant used. [Comm 45.31 (4) (b)]

Comparison with federal regulations

An Internet-based search of the *Code of Federal Regulations*(CFR) found the following existing federal regulations relating to the activities to regulated by this rule:

Title 10 CFR Part 50 – Domestic Licensing of Production and Utilization Facilities. This regulation of the Nuclear Regulatory Commission applies to systems and components of boiling and pressurized water-cooled nuclear power reactors. This regulation adopts portions of the ASME Boiler and Pressure Vessel Code.

An Internet-based search of the 2005 through 2008 issues of the *Federal Register* found a final rule published September 29, 2005 concerning Title 10 CFR Part 50, the Nuclear Regulatory Commission (NRC). The rule amends the NRC regulations to incorporate by reference the latest edition of the ASME Boiler and Pressure Vessel Code pertaining to construction and in-service inspection of nuclear power plant components.

Comparison with rules in adjacent states

Originating in 1914, the ASME Boiler and Pressure Vessel Code is now adopted in part or in its entirety, by 49 states and numerous municipalities and territories of the United States and all the provinces of Canada.

An Internet-based search found that all adjacent states adopt by reference various editions and addenda of the ASME Boiler and Pressure Vessel Code. These states also create amendments to the adopted standard similar to Wisconsin's administrative rules for boilers and pressure vessels.

The following states and their respective departments have adopted and enforced the following ASME code editions:

- a. The Illinois Office of the State Fire Marshal, Division of Boiler and Pressure Vessel Safety regulates the construction, installation, operation, inspection and repair of boilers and pressure vessels throughout the state of Illinois. The Illinois Boiler and Pressure Vessel Safety Rules and Regulations are similar to the requirements in the Wisconsin Boiler and Pressure Vessel Code, including the Illinois incorporation by reference of the ASME Boiler and Pressure Vessel Code (2001 with 2003 addenda) the National Board Inspection Code (2001 with 2003 addenda) and the API 510 standard (8th edition).
- b. The Iowa Department of Workforce Development, Division of Labor Services administers and enforces the Boilers and Unfired Pressure Vessels Chapter of the Iowa Code. That chapter requires new installations of boilers and pressure vessels to be designed, manufactured, installed, inspected and stamped in accordance with the applicable requirements of the ASME Boiler and Pressure Vessel Code (2004 with 2005 addenda).
- c. The Michigan Department of Labor and Economic Growth administers the Michigan Boiler Law and rules. The rules are similar to the Wisconsin rules, and establish minimum standards of safety for the use, construction, installation, inspection, alteration and repair of boilers with limited rules for specified pressure vessels. The rules adopt the National Board Inspection Code (2004 with addenda), the ASME Boiler and

Pressure Vessel Code (2004 with addenda) and the ASME B31.1 Power Piping standard (2004 with addenda).

- d. The Minnesota Department of Labor and Industry, Division of Boiler Inspection administers rules that address the manufacture, installation, repair, operation, safety and inspection of boilers, pressure vessels and appurtenances. The rules contain provisions for licensing of boiler operations and include minimal requirements for hobby boilers (steam traction engines). The rules are similar to Wisconsin rules and incorporate the most recent editions and addenda of the ASME Boiler and Pressure Vessel Code and the National Board Inspection Code.

Summary of factual data and analytical methodologies

The primary methodology for updating the Wisconsin Boilers and Pressure Vessels Code, chapter Comm 41 has been a review and assessment of the latest editions of the national model codes that serve as the basis for Wisconsin codes. The department's review and assessment process involved the participation of the Boiler and Pressure Vessel Code Advisory Council. The members of that Council represent the many stakeholders involved in the boilers and pressure vessels industry including manufacturers, inspectors, building contractors, regulators, labor, insurance and the public. (A listing of the Boiler and Pressure Vessel Code Advisory Council is provided at the end of this analysis.)

The department believes the national model codes reflect current societal values with respect to protecting public health, safety and welfare in the design, construction, use, operation and maintenance of boilers and pressure vessels in commercial and public buildings and places of employment.

The ASME Boiler and Pressure Vessel Code is kept current by the Boiler and Pressure Committee, a volunteer group of more than 950 engineers. The Committee meets regularly to consider requests for interpretations, revision and to develop new rules. In the formulation of its rules and in the establishment of maximum design and operating pressures, the Committee considers technological advances including materials, construction, methods of fabrication, inspection, certification and overpressure protection. More information on the development of these standards may be obtained from the ASME web site at www.asme.org.

Analysis and supporting documents used to determine effect on small business

The department used the Boiler and Pressure Vessel Code Advisory Council to gather and analyze information on potential impacts in complying with both the technical and administrative requirements of the codes. A responsibility of council members is to bring forth concerns that their respective organizations may have with the requirements including economic impact.

In addition to posting rule development and council activities on the department's web site, the department offers an Email subscription service, which is available to all small businesses. This service provides Email notification of council meetings, meeting, agendas and council meeting progress reports so small businesses can follow proposed code changes.

Adopting the most current edition of the ASME national standards will not impose a significant impact on small businesses involved in the inspection, maintenance, servicing, and reporting requirements for boilers and pressure vessels.

Initial Regulatory Flexibility Analysis

Summary

The department believes the rules will not increase the effect on small businesses from what the current rules impose on them. An economic impact report is not required pursuant to s. 227.137, Stats.

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

The proposed rules will affect any business involved with the design, construction, installation, operation, inspection, testing, maintenance, repair or alteration of boilers or pressure vessels and mechanical refrigeration. The Department believes the rules will provide additional options for small businesses who want to use a solid fuel-fired water-heating appliance since the rules will permit an automatic feed system and the use of other fuels.

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

There is no new reporting, bookkeeping or other procedure necessary for compliance with the rules.

Types of professional skills necessary for compliance with the rules.

There are no types of professional skills necessary for compliance with the rules.

Rules have a significant economic impact on small businesses?

No.

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.

Fiscal Estimate

Summary

The Safety and Buildings Division is responsible for administering and enforcing rules relating to boilers and pressure vessels. The proposed rules adopt by reference the latest edition of ASME Standards and clarify existing technical requirements. The existing requirements relating to solid fuel-fired water-heating appliances have been reorganized and modified to permit an automatic feed system and the use of other fuels. The proposed rules for solid fuel-fired water-heating appliances may slightly increase the Division's workload, but it is anticipated the work can be absorbed within the agency's budget.

The proposed rules will require inspection of solid fuel-fired water-heating appliances but it is anticipated this inspection cost will not have a significant effect on the private sector.

State fiscal effect

None

Local government fiscal effect

None

Long-range fiscal implications

None known

Notice of Hearing

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 104— CR 08-031

NOTICE IS HEREBY GIVEN that pursuant to section 560.207 (4) of the Statutes, the Department of Commerce will hold a public hearing on emergency rules and proposed permanent rules creating chapter Comm 132, relating to certifying applicants and allocating dairy manufacturing facility investment tax credits, and affecting small businesses.

Hearing Information

The public hearing will be held as follows:

Date and Time:	Location:
May 14, 2008 Wednesday 9:30 a.m.	Thompson Commerce Bldg. Third Floor, Room 3B 201 W. 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 emergency rules and proposed permanent 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 rulemaking will remain open until May 19, 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. E-mail comments should be sent to srockweiler@commerce.state.wi.us. If e-mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

Copies of Proposed Rule

The emergency rules and proposed permanent rules and an analysis of the rules are available on the Internet by entering "Comm 132" in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Steven Sabatke at the Department of Commerce, Bureau of Business Development, P.O. Box 7970, Madison, WI, 53707-7970; or at telephone (608) 267-0762 or (608) 264-8777 (TTY); or at ssabatke@commerce.state.wi.us. Copies will also be available at the public hearing.

Agency Contact Person

Steven Sabatke, Wisconsin Department of Commerce, Bureau of Business Finance and Compliance, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 267-0762; e-mail Steven.Sabatke@Wisconsin.gov.

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 at cdunn@commerce.state.wi.us.

Analysis Prepared by Department of Commerce

Statutes interpreted

Sections 71.07 (3p), 71.28 (3p), 71.47 (3p), and 560.207 – as created in 2007 Wisconsin Act 20.

Statutory authority

Sections 227.11 (2) (a) and 560.207 (4), Stats.

Explanation of agency authority

Section 560.207 (4) of the Statutes requires the Department to promulgate rules for implementing and administering a program to certify applicants and allocate tax credits for the dairy manufacturing investments addressed in sections 71.07 (3p), 71.28 (3p), and 71.47 (3p) of the Statutes. 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 tax credits, but none of those programs relate specifically to investments in dairy manufacturing facilities. For example, section 560.798 of the Statutes and chapter Comm 118 both refer to the Department's Agricultural Development Zone Program, which provides tax credits to agricultural businesses for job creation, capital investment, and environmental remediation. Those businesses must be located in specific geographic agricultural development zones in the State in order to qualify.

Plain language analysis

The proposed rules in this order specify (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.

Comparison with federal regulations

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

Comparison with rules in adjacent states

Michigan. Michigan provides tax abatement to agricultural processing facilities that qualify for the Agricultural Processing Renaissance Zones (APRZ) program. There are no administrative rules for the program, but guidelines are available through the Michigan Economic Development Corporation's Web site at <http://www.themedc.org>.

Minnesota. Minnesota offers various tax credit programs, but none that are similar to the dairy manufacturing facility investment credit in Wisconsin.

Iowa. In Iowa, the High Quality Job Creation Program offers tax credits, exemptions and refunds to qualifying businesses to offset the cost incurred to locate, expand, or modernize an Iowa facility. Qualifying businesses must meet several eligibility requirements, including producing value-added goods or being in one of 11 targeted industries. Administrative rules for this program are available in the Iowa Administrative Code, 261-Chapter 68. Further information

is available through the Iowa Department of Economic Development Web site at www.iowalifechanging.com.

Illinois. Illinois offers various tax credit programs, but none that are similar to the dairy manufacturing facility investment credit in Wisconsin.

Summary of factual data and analytical methodologies

The data and methodology for developing these proposed rules were derived from and consisted of (1) incorporating the criteria in 2007 Wisconsin Act 20; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax-credit verification; (3) soliciting and utilizing input from the Department of Revenue and the Department of Agriculture, Trade and Consumer Protection, and from representatives of the stakeholders who are expected to participate in this program; and (4) reviewing Internet-based sources of related federal, state, and private-sector information.

Analysis and supporting documents used to determine effect on small business

The primary document that was used to determine the effect of the proposed rules on small business was 2007 Wisconsin Act 20. This Act requires the Department to implement a program to certify taxpayers as eligible for the dairy manufacturing facility investment credit under sections 71.07 (3p), 71.28 (3p), and 71.47 (3p) of the Statutes, and requires the Department to promulgate rules for administering the program. The proposed rules apply their private-sector requirements only to dairy manufacturing facilities for which a corresponding tax credit is desired.

Initial Regulatory Flexibility Analysis

Summary

The proposed rules are not expected to impose significant costs or other impacts on small businesses because the rules address submittal of documentation only by applicants who choose to pursue tax credits for dairy manufacturing modernization or expansion activities.

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

Owners and operators of dairy manufacturing facilities who chose to apply for the tax credits in ss. 71.07 (3p), 71.28 (3p), and 71.47 (3p) of the Statutes, for investing in those facilities.

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

Applicants for becoming certified as being eligible for the tax credits must submit an application that demonstrates compliance with the criteria specified under the rules.

Types of professional skills necessary for compliance with the rules.

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

Rules have a significant economic impact on small businesses?

No.

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.

Fiscal Estimate

Summary

Although the rules will newly result in review of documentation relating to certifying applicants as eligible to then claim allocated tax credits for investments in dairy manufacturing facilities, the number of these reviews and allocations is expected to be too small to result in significant changes in the Department's costs for administering its business development 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 tax credits for investments in dairy manufacturing facilities.

State fiscal effect

None

Local government fiscal effect

None

Long-range fiscal implications

None known

Notice of Hearing Employee Trust Funds CR 08-026

A public hearing will be held to consider a proposed rule revising chs. ETF 10 and 50, relating to termination of employment and administrative leave of absence.

Hearing Information

<u>Date and Time:</u>	<u>Location:</u>
May 22, 2008 1:00 p.m.	Dept. of Employee Trust Funds Conference Room GB 801 West Badger Road Madison, WI

Persons wishing to attend should come to the reception desk up the stairs (or by elevator) from the main entrance to the building.

Agency Contact Person

Please direct any questions about the proposed rule to David Nispel, Deputy Chief Counsel, Department of Employee Trust Funds, P. O. Box 7931, Madison, WI 53707. The email address: david.nispel@etf.state.wi.us. The telephone number is: (608) 264-6936.

Submission of Written Comments

Written comments on the proposed rule may be submitted to David Nispel, deputy chief counsel, department of employee trust funds, 801 W. Badger Road, P. O. Box 7931, Madison, WI 53707. Written comments must be received at the Department Of Employee Trust Funds no later than 4:30 p.m. on Friday, May 23, 2008.

Copies of Proposed Rule

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P. O. Box 7931, Madison, WI 53707-7931. The telephone number is: (608) 266-1071.

Analysis Prepared by the Department of Employee Trust Funds

Statute interpreted

Section 40.63, Wis. Stats.

Statutory authority

Sections 40.03 (2) (i) and 227.11 (2) (a), Wis. Stats.

Explanation of agency authority

By statute, the DETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Also, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule

Ch. ETF 10, Wis. Admin. Code, concerns the administration of the Public Employee Trust Fund and Ch. ETF 50 concerns disability benefits provided in accordance with the trust fund. Section 40.63, Wis. Stats. concerns disability annuities from the Wisconsin retirement system. There are no other related administrative rules or statutes.

Plain language analysis

The purpose of this rule is to enable participants to continue to receive private benefits offered by their employer, such as health insurance, while they are receiving disability benefits under s. 40.63, Stats.

Comparison with federal regulations

The only federal regulations that may be affected by this proposed rule are provisions of the Internal Revenue Code regulating qualified pension plans. The Wisconsin Retirement System is required to be maintained as a qualified plan by s. 40.015, Stats. As a general rule, pension plans are supposed to provide benefits at retirement. However, federal regulations state that a pension plan may provide for the payment of a pension due to disability. The Wisconsin Retirement System provides for disability annuities under s. 40.63, Stats.

Comparison with rules in adjacent states

The department did not locate any comparable rule or statute in any adjacent states.

Summary of factual data and analytical methodologies

Currently, the department interprets s. 40.63, Stats. to permit a disabled employee, who is on a leave of absence and not expected to return to service, to apply for a disability annuity benefit and to receive such benefits if the employee's application is approved. This practice followed an internal review of the department's policies and the pertinent statutes and administrative rules for administering the s. 40.63 disability benefit program.

This proposed rule addresses the status of disability annuitants with regard to the Wisconsin Retirement System and other fringe benefits under ch. 40, Stats. For example, if a disabled employee is deemed to have terminated employment for all ch. 40 purposes, the effect on that person's health insurance and premiums would vary depending on whether the employer participated in the group insurance board's health insurance under ch. 40 or if the employer offered other health insurance.

Under s. ETF 50.54 (2) (b), long-term disability insurance benefits, which replaced disability annuity benefits for employees not continuously employed since before October 16, 1992, already are available for employees on a leave of absence. This proposed rule will conform the eligibility

criteria regarding termination of employment for both disability annuities and long-term disability insurance.

Analysis and supporting documents used to determine effect on small business

The rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

Initial Regulatory Flexibility Analysis

There is no effect on small business.

Fiscal Estimate

The rule codifies current department practice. The rule will have no effect on state funds.

Text of Proposed Rule

SECTION 1. ETF 10.08 (2) (b) 4. is amended to read:

4. Except as provided in ETF 50.30 (4), upon termination of employment the participant is treated consistently with the status of a former employee. This includes, but is not limited to the terminated employee no longer being eligible for benefits available only to active employees. Examples of such benefits may include health insurance, life insurance, income continuation insurance coverage, making deferred compensation or tax sheltered annuity contributions, worker's compensation coverage, internal grievance, promotion or transfer rights, or rights available to active employees under a collective bargaining agreement. This subd. shall not apply to benefits that may be available to the employer's retired employees, such as severance pay, post-retirement insurance coverage and/or employer payment of premiums, or post-retirement benefits or other rights provided through collective bargaining or other retirement agreements. However, agreements made after the termination date for future compensable services to be rendered by the employee would not be precluded under subd. 3.

SECTION 2. ETF 50.30 (4) is created to read:

(4) To be eligible for disability benefits under s. 40.63, Stats., a participant must terminate all participating employment. For disability benefits under s. 40.63, Stats., "termination of employment" means that the participant has ceased to be a participating employee on the termination date that the employer reports to the department for the purpose of all benefits administered under ch. 40, Stats. Such benefits include health insurance coverage and sick leave credit usage, life insurance coverage, income continuation insurance coverage, Wisconsin retirement system coverage and death benefits under s. 40.73 (1) (am) and (c), and making deferred compensation contributions under s. 40.80, Stats. A termination of employment under this subd. does not preclude a participating employer from placing the participant on an administrative leave of absence as long as the employee is not expected to resume active service.

Proposed Effective Date

This rule shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative register as provided by s. 227.22 (2) (intro.), Stats.

**Notice of Hearing
Health and Family Services**

***Management and Technology and Strategic Finance,
Chs. HFS 1—
CR 08-010***

NOTICE IS HEREBY GIVEN that pursuant to s. 46.287 Stats., and interpreting s. 46.286 (3) (a) Stats., as revised by 2007 Wisconsin Act 20, the Wisconsin Department of Health and Family Services will hold a public hearing on emergency rules amending ss. HFS 10.55 (1) and 10.56 (2) and creating ss. HFS 10.55 (1m) and 10.56 (2m), relating to fair hearings, and continuation of benefits pending the outcome of a grievance, Department review, or fair hearing under the Family Care program at the date, time, and location listed below.

Hearing Information

Date and Time Location

May 12, 2008 Dept. of Health and Family Services
1:00 – 2:00 p.m. 1 West Wilson Street
Room 518B
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.

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 May 18, 2008.

Copies of Proposed Rules

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

Agency Contact Person

Charles Jones
Division of Long Term Care
1 W. Wilson St., Room 518
P.O. Box 7851
Madison, WI 53707-7851
email: jonescm@dhfs.state.wi.us
Phone: (608) 266-0991
TTY: (888) 241-9432

Analysis Prepared by the Department of Health and Family Services

Statute interpreted

Section 46.287, Stats.

Statutory authority

Section 46.286 (3) (a), Stats., as revised by 2007 Wis. Act 20.

Explanation of agency authority

The 2007–2009 Biennial Budget (2007 Act 20) eliminates the entitlement to Family Care non–Medicaid eligibility. In addition, the federal Centers for Medicare and Medicaid Services has restricted the Family Care benefit for enrollees at the non–nursing home level of care.

Related statute or rule

Section 46.287, Stats.

Plain language analysis

There are two changes in federal and state policy that precipitate this emergency rulemaking.

First, non–Medicaid entitlement to Family Care benefits was eliminated under 2007 Act 20. Consequently, persons who are currently enrolled in the Family Care program but who are ineligible for Medicaid benefits will be disenrolled from the Family Care program, unless they become eligible for Medicaid benefits on or before July 1, 2008. Non–Medicaid eligible persons enrolled on December 31, 2008, may stay enrolled until June 30, 2008, in order to have time to attain Medicaid eligibility. The Department, the Family Care managed care organizations, and the local aging and disability resource centers will assist individuals in that attempt. The Department will provide notice to individuals subject to disenrollment under 2007 Act 20.

Second, the federal Centers for Medicare & Medicaid Services has restricted the Family Care benefit for persons at the non–nursing home level of care. Individuals at the non–nursing home level of care are no longer entitled to receive the home and community–based services more typically provided to people who do have a nursing home level of care and, therefore, may have some services reduced or terminated because of the change in CMS policy. The Department will provide notice of reduction or termination to these individuals.

Section HFS 10.55 provides enrollees with a right to a fair hearing when services are reduced or terminated, or eligibility is denied. In addition, s. HFS 10.56 (2) provides that enrollees whose Family Care benefits are reduced or terminated have a right to have their current services continued pending the outcome of a grievance, Department review, or fair hearing. If a person notified of the elimination of the non–Medicaid benefit in Family Care or a reduction of services because of the change in benefit for people at the non–nursing home level of care appealed and requested continuation of services, under the current rules a hearing and continuation of services would have to be granted.

However, persons who are non–Medicaid eligible who appeal the loss of services will lose the appeal, because the loss of benefits is due to a change in state law, which makes it clear that the Family Care benefit is no longer available to them. Similarly, persons who have a non–nursing home level of care who have home and community–based services reduced or terminated as a result of the change in the available benefit will lose, because the CMS policy change in the benefit package makes it clear that such individuals are no longer entitled to those services. Holding a fair hearing in these situations would be an inefficient use of resources for the participant, the Department, and the Division of Hearings and Appeals.

If either group receive continuation of services during a fair hearing, Department review, or grievance and lose they will be responsible to pay for the cost of the services provided pending the outcome of the fair hearing, Department review, or grievance. The cost to the individual could amount to

thousands of dollars. Such a situation would be detrimental to the welfare of affected individuals and should be prevented.

The Department has issued an emergency order providing an exception to the right to a fair hearing and continuation of services during a fair hearing, grievance, or Department review when Family Care benefits are reduced or terminated by an act of the federal government or the state legislature and the individual whose benefits have been terminated or reduced does not dispute that he or she falls within the category of persons for whom the benefit was reduced or terminated.

Comparison with federal regulations

There are similar provisions in Medicaid rules at 42 CFR §431.220(b), which provides that the State Medicaid Agency “need not grant a hearing if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all recipients.” And, at 42 CFR § 431.230(a)(1), which provides that individuals have a right to continuation of services pending the outcome of an appeal unless, “it is determined at the hearing that the sole issue is one of Federal or State law or policy.”

Comparison with rules in adjacent states

Illinois: does not have a program similar to Family Care.
Iowa: does not have a program similar to Family Care.
Michigan: does not have a program similar to Family Care.
Minnesota: does not have a program similar to Family Care.

Summary of factual data and analytical methodologies

The Department reviewed 2007 Act 20, and the policy change by the Center for Medicare and Medicaid Services. The Department also assessed the adverse impact of these changes on the individuals affected.

Analysis and supporting documents used to determine effect on small business

The rules would not have an effect on businesses.

Initial Regulatory Flexibility Analysis

The rules would not have an effect on businesses.

Small Business Regulatory Coordinator

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

Fiscal Estimate

The revised rule will result in an indeterminate decrease in costs to the Department and to Family Care managed care organizations (MCOs). Some MCOs are units of county government. Some MCOs are private non–profit organizations, which are not small businesses. The decrease in costs to the Department and to MCOs will result from not being required to assign staff to conduct or participate in fair hearings in which the appellant cannot be successful. In addition, MCOs may have decreased costs because they will not be required to continue to provide services during an appeal in which the appellant cannot be successful.

Notice of Hearing
Insurance
CR 08–032

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., the Office of the Commissioner of Insurance will hold a public hearing to

consider the adoption of the proposed rules revising sections Ins 3.455 and 3.46, Wis. Adm. Code, relating to long-term care plans including the plans qualifying for the Wisconsin long-term care insurance partnership program and affecting small business.

Hearing Information

Date: May 12, 2008

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

Place: OCI, Room 227, 125 South Webster St., 2nd Floor
Madison, WI

Submission of Written Comments

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

Mailing address:

Julie E. Walsh
Legal Unit – OCI Rule Comment for Rule Ins 34556
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Street address:

Julie E. Walsh
Legal Unit – OCI Rule Comment for Rule Ins 34556
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Email address:

Julie E. Walsh
julie.walsh@wisconsin.gov

Web site: <http://oci.wi.gov/ocirules.htm>

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

Copies of Proposed Rule and Agency Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov, (608) 264-8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

Small Business Regulatory Coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266-7843 or at email address eileen.mallow@wisconsin.gov

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

Statutes interpreted

Sections 600.01, 601.415 (8), and 628.34 (12), 628.348, Stats.

Statutory authority

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 628.348, Stats.

Explanation of agency authority

The OCI, in order to comply and implement the requirements of 2007 Wis. Act 20, creating the Wisconsin Long-Term Care Insurance Partnership Program (Partnership Program) including the requirements for intermediary training and the process by which insurers

submit policies that are intended to qualify for the Partnership Program must adopt the 2000 and 2006 National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Act and Model Laws, pursuant to the Deficit Reduction Act of 2005 (Pub.L. 109-171) (DRA). These amendments are needed to expand consumer protection and comply with the requirements of the Center for Medicare and Medicaid Services (CMS) as delegated to the NAIC the function of regulating the insurers offering long-term care insurance products.

Related statutes or rules

The Partnership Program is described at s. 49.45 (31), Stats., and requires coordination between the OCI and the Department of Health and Family Services.

Plain language analysis

The current administrative rule was last revised in 2001 and is not fully compliant with the NAIC Long-Term Care Model Act and NAIC Long-Term Care Model Law (NAIC Model Act and Model Law). When 2007 Wis. Act 20 created the Partnership Program, the OCI is required to implement the NAIC Model Act and Model Law in order for insurers to offer policies compliant with the DRA. Significant portions of the proposed rule update and expand definitions and require disclosure of these definitions to insureds so that they understand how the long-term care, home health care or nursing home insurance policy is able to be used and the limitations or exclusions that may be applied by insurers.

In section 3.455, the modifications primarily address the conversion from a group long-term care insurance policy to an individual long-term care insurance policy. The expanded information is intended to both comply with the NAIC Model Act and Model Law and Wisconsin conversion and continuation law. The section also includes expanded definition related to conversion of long-term care insurance policies.

Section 3.46 modifications begin with updated and revised definitions that are intended to provide consumers with greater specificity regarding terms used within long-term care, home health care and nursing home care insurance policies. Of note the current NAIC Model Act and Model Law do not exempt group long-term care insurers and as such the exemption in s. 3.46 (2) has been struck. Consumer protection elements are introduced or existing protections expanded throughout this section. One tool to both provide a check on the industry and its intermediaries and better assist consumers with the purchase of long-term care, home health care or nursing home care insurance is through the consolidation and expansion of the marketing requirements. Intermediaries and insurers are required to report on their prior dealings with consumers and state that the policy being sold is an appropriate product for that person. Although similar tools are currently required, the expansion requires additional data reporting to the OCI so that as the regulator we are provided a clearer picture of what sales are occurring and trends in the marketplace. The information will also highlight for both OCI and the insurers contracting with intermediaries information that may reveal unacceptable practices including high pressure sales tactics or interactions with persons resulting in a higher rate of complaints than other intermediaries. Appropriateness of each sale is to be reviewed and must meet the insurer's guidelines.

Additionally, some of the modifications reflect changes in our society, for instance the recognition and use of the internet or on-line completion of applications. Also, nonforfeiture of benefits provisions reflect the increasing cost of long-term care and the affect those increases have on the insureds. Some

seniors, at a time near to when the policy may be most useful are least able to afford premium increases. Nonforfeiture of benefits or contingent nonforfeiture provisions allow those who have paid premiums for many years benefits even after they are no longer able to keep their policy enforce.

New paragraphs are also added regarding upgrade and down-grades of policies, and expanded disclosure requirements are included for various benefits including nonforfeiture benefits. These modifications reflect the marketplace and include oversight provisions. These types of benefits potentially give consumers greater control and options when faced with increasing premiums rather than just lapsing the policy due in part to financial constraints. Expanded notification to insureds of new benefits or changing access to providers is also contained in this proposed rule, a modification that allows insureds options that they may not previously been informed of or had access to from within the same carrier. Requirements monitoring replacement of policies is also expanded to enhance oversight of actions by intermediaries and insurers.

Finally, s. 3.46 includes a new section related to initial and on-going intermediary training for long-term care insurance products. In part, this provision delineates training requirements related to the Wisconsin Partnership Program, but is required for all intermediaries offering, selling or negotiating long-term care contracts. Insurers are required to verify compliance to the OCI and OCI assure the Department of Health and Family Services that the intermediaries dealing with Wisconsin consumers are aware of the unique programs available in Wisconsin.

Section 3.465 is newly created to implement the requirements of the Wisconsin Long-Term Care Insurance Partnership Program. This section contains minimum inflation protection percentage increases by age as outlined by the federal government in order for the policies offered by insurers both meet the requirements of the Deficit Reduction Act of 2005 (Pub.L. 109-171). The section also delineates when and how insurers exchange existing long-term care insurance policies for policies that are intended to qualify for the Partnership Program in both the individual and group market. Appendices outline various notices that are to be provided to consumers at the time of solicitation and again at the point of sale. These are intended to educate the consumer so that the may be better able to make informed decisions.

Comparison with federal regulations

It is understood that CMS is anticipating promulgating rules related to the reciprocity of the Partnership Program. Those rules are not anticipated to affect OCI.

Comparison of rules in adjacent states

Illinois: Illinois adopted NAIC Model Act and Law in January 2003 with no substantive deviations. Illinois noticed proposed regulations in compliance with the 2006 NAIC Model Act and Law on August 3, 2007, without substantive deviations. Illinois HB 517 authorizing the Medicaid Office to file the review State Partnership Application for participation in the Partnership Program on August 16, 2007.

Iowa: Iowa adopted the 2000 version of the NAIC Model Act and Model Law in July 2003. With the exception of the intermediary training that Iowa promulgated effective January 1, 2009, the state has notice proposals to adopt the 2006 NAIC Model Act and Law. The requirement for intermediary training requires 4 hours of initial training and 3 hour on-going training every 3 years thereafter. Iowa has not implemented the Partnership Program in accordance with the DRA as yet.

Michigan: Michigan adopted the 200 version of the NAIC Model Act and Law in June 2007. Michigan regulates long-term care insurance by statute and as such did not adopt exact language as the NAIC Model but did incorporate each area covered by the Model. Michigan did enact authorizing legislation to implement the Partnership Program in 2007 and filed its State Partnership Application retroactive to October, 2007. Michigan has not implemented the intermediary training for all intermediaries and is currently formalizing the process.

Minnesota: Minnesota adopted the 2000 NAIC Model Act and Law in January 2002, without substantial deviation. The DRA, Partnership Program became effective July 1, 2006. However there has been delays it was not operational until October 2007. Minnesota adopted the intermediary training and additionally requires non-resident intermediaries demonstrate knowledge of unique aspects of the Minnesota medial assistance program.

Summary of factual data and analytical methodologies

The OCI was required to implement portions of the Partnership Program in compliance with 2007 Wis. Act 20, and utilized a subcommittee comprised of consumer, industry, intermediary and regulatory members to achieve its duty. The group met, in open meetings, two times in the past two months to review and discuss Partnership drafts proposed by the OCI.

For the provisions updating and incorporating the NAIC models, the OCI reviewed each NAIC provision against existing Wisconsin law and rule to ensure consumer protections were not lost in the process and to expand consumer information.

Analysis and supporting documentation used to determine effect on small business

The key provision that may have an effect on small businesses is the requirement for long-term care intermediary initial and on-going training. The OCI included a provision to permit the training to qualify as continuing education credits and to recognize courses non-resident intermediaries may take in states other than Wisconsin. With the exception of two-credit hours that must include the training information developed and maintained by the Department of Health and Family Services, the training requirements allow for the greatest flexibility to not unduly burden intermediaries or unnecessarily increase expenses related to receiving the required training. It is expected, in light of these considerations that if there is any effect, the effect on small businesses will not be significant.

Description of the effect on small business

This rule will have little or no effect on small businesses.

Initial Regulatory Flexibility Analysis

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

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

Types of small businesses affected

Insurance agents.

Description of reporting and bookkeeping procedures required

None beyond those currently required.

Description of professional skills required

None beyond those currently required.

Fiscal Estimate**State fiscal effect**

None

Local fiscal effect

None

Long-range fiscal implications

None

Notice of Hearing**Natural Resources***Fish, Game, etc., Chs. NR 1—***EmR0808 (FH-40-07A(E))**

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.09 (2) (intro.), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 27.01 (2) (j), 29.014 (1), 29.041, 29.039 (1), 29.509 (4) and (5), 227.11 (2) (a) and 227.24 (1) (a), Stats., interpreting ss. 23.09 (2) (intro.), 23.22 (2) (a), 29.014 (1), 29.039 (1), 29.041 and 227.11 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FH-40-07A(E) which took effect on April 4, 2008.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

May 12, 2008	Room 405
Monday	GEF #2 State Office Building
11:00 a.m.	101 South Webster Street Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bill Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the hearing.

Submission of Comments and Copies of Rule

The emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>.

Written comments on the proposed rule may be submitted via U.S. mail to Mr. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until **May 16, 2008**. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Horns.

Analysis Prepared by the Dept. of Natural Resources

FH-40-07A(E) revises chs. NR 19 and 20, Wis. Adm. Code, pertaining to control of fish diseases and invasive species, as affected by Natural Resources Board Emergency Order No. FH-40-07(E), which took effect on November 2, 2007. FH-40-07A(E) deals with viral hemorrhagic septicemia (VHS) virus, which is present in Wisconsin waters.

FH-40-07A(E) will:

1. Allow anglers to retain minnows after a fishing trip if the minnows were obtained from a Wisconsin bait dealer and

have not been exposed to the water or fish of the lake or stream, or the minnows were obtained from a Wisconsin bait dealer and will subsequently be used for bait only on that same water body.

2. Allow up to 2 gallons of water in a container holding those minnows to be transported away from the water body.

3. Prohibit the harvest of minnows (except suckers) from any water body where the Department has reason to believe that the VHS virus may be present (as identified by the Department).

4. Allow suckers to be harvested from those waters, but not be transported alive away from those waters.

Notice of Hearing**Transportation****CR 08-029**

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.15 (1), 218.0152 and 227.11, Stats., interpreting Subchapter 1 of Chapter 218, Stats., the Department of Transportation will hold a public hearing to consider the amendment of chs. Trans 137, 138 and 139, Wis. Adm. Code, relating to motor vehicle dealer franchise operations, record keeping and trade practices.

Hearing Information

May 13, 2008	Hill Farms State Transportation Bldg.
10:00 a.m.	Room 254
	4802 Sheboygan Avenue
	Madison, WI

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available.

Agency Contact Person, Submission of Written Comments, Copies of Proposed Rule

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail at: carson.frazier@dot.state.wi.us.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Analysis Prepared by the Department of Transportation**Statutes interpreted**

Subchapter 1 of Chapter 218, Stats.

Statutory authority

Sections 85.16 (1), 218.0152 and 227.11, Stats.

Explanation of agency authority

The Wisconsin Department of Transportation is authorized to license and regulate motor vehicle dealers and their trade practices. This rule making controls motor vehicle dealer trade practices, record keeping, and relevant definitions.

Related statute or rule

Chs. 218, 341, 342 and 429, Stats., chs. Trans 137, 138 and 139, Wis. Adm. Code.

Plain language analysis

This rule amendment makes several additions to chs. Trans 137, 138 and 139, regarding motor vehicle dealer requirements under Chapter 218, Wis. Stats. The rule additions clarify several authorized and prohibited actions by dealers, most of which the Department has previously clarified in policy.

1. Explicitly define in chs. Trans 137, 138 and 139 a “title” as a title in s. 342.10, Stats. While common understanding of the term has long prevailed, this will make the meaning clear.
2. Create a definition in ch. Trans 139 of “bird dogging,” i.e., referral selling, and explicitly prohibit this practice. While this practice is prohibited in statute, which governs dealer behavior, DOT believes it would be appropriate to repeat the statutory prohibition in rule and elaborate on statutory definition.
3. In ch. Trans 138, clearly allow multi-location dealership records to be kept at a single location, with proper availability for inspection. This is implicit in rule reference to a dealership, and is currently allowed by DMV policy, but it would be appropriate to state explicitly, and to clarify what constitutes a single dealership with multiple locations as opposed to separate dealerships.
4. Amend the ch. Trans 137 definition of “used motor vehicle” to include rental or leased vehicles with 4,000 or fewer miles that have been damaged. The current definition effectively treats these vehicles as “new” for the purpose of needing a franchise to sell the vehicles.
5. Amend ch. Trans 139 to allow, instead of currently prohibit, the use of motor vehicle pricing guides (such as Kelly Blue Book or Edmunds guide) as price comparison in advertising used vehicle prices.
6. Amend the ch. Trans 138 requirement that dealers have in their possession the title for any vehicles they offer for sale to exclude title of a manufacturer buy-back under the lemon law, instead allowing a dealer to have in its possession a copy of the title. Wis. Stat. 218.0171(2)(d) requires that no manufacturer buy-back may be sold or leased to a new customer unless the manufacturer buy-back condition is fully disclosed to that customer. To protect themselves from liability, manufacturers have developed a disclosure form that they require dealers to submit to them before they will release the title to the dealer. In the meantime, the dealer keeps a copy of the title in its possession. DMV allows this by policy, and DMV wishes to clarify this in rule.
7. Amend ch. Trans 139 to clarify that if the dealer proposes to make changes to the warranty and service contract language in the Buyers Guide or in the Purchase Contract, the dealer shall send the proposed changes to DOT, which will reply within a certain time frame approving or denying the changes.

Comparison with federal regulations

Wisconsin statutes and rules govern motor vehicle dealer sales practices and recordkeeping. No federal regulations apply to these policies.

Comparison with rules in adjacent states

Most of the proposed provisions are already DOT policy. With regard to the newly proposed provisions:

Michigan:

1. Michigan would consider a damaged rented or leased vehicle a “used” vehicle, similar to what DOT proposes in this rule making.
2. Michigan does not have regulations on this point, and thus would allow use of pricing guide, similar to what DOT proposes in this rule making.
3. Michigan regulations do not require verbatim language or approval of language in the purchase contract or disclosure statements, unlike Wisconsin current or proposed regulations.

Minnesota:

1. Minnesota would consider a damaged rented or leased vehicle a “used” vehicle, similar to what DOT proposes in this rule making.
2. Minnesota regulations regarding advertising are unclear to DOT, as the Minnesota Department of Public Safety does not regulate advertising.
3. Minnesota regulations do not require verbatim language or approval of language in the purchase contract or disclosure statements, unlike Wisconsin current or proposed regulations.

Illinois:

1. Illinois would consider a damaged rented or leased vehicle a “new” vehicle, similar to Wisconsin’s current rule.
2. Illinois would allow use of pricing guide, similar to what DOT proposes in this rule making.
3. Illinois regulations require documents to comply with specific state law, similar to Wisconsin’s current rule.

Iowa:

1. Iowa would consider a damaged rented or leased vehicle a “used” vehicle, similar to what DOT proposes in this rule making.
2. Iowa Attorney General’s office does not review advertising related to car price.
3. Iowa regulations do not require verbatim language or approval of language in the purchase contract or disclosure statements, unlike Wisconsin current or proposed regulations.

Summary of factual data and analytical methodologies

Most of the proposed provisions are already DOT policy. The following provisions are newly proposed:

1. Amend the ch. Trans 137 definition of “used motor vehicle” to include rental or leased vehicles with 4,000 or fewer miles that have been damaged. The Department has received several inquiries during the past few years from rental and leasing companies that need to dispose of damaged vehicles. The Department has concluded that allowing this exception to the new vehicle definition, for purposes of needing a franchise to sell, will not adversely affect franchised motor vehicle dealers.
2. Amend ch. Trans 139 to allow, instead of currently prohibit, the use of motor vehicle pricing guides (such as Kelly Blue Book or Edmunds guide) as price comparison in advertising used vehicle prices. This has been considered an unfair trade practice because price guides may not sufficiently account for vehicle condition. However, the Department recognizes that these pricing guides are readily accessible on the internet and in print, and consumers often make use of them. The Department proposes to couple allowing use of price guides with requirements for dealer disclosure of vehicle condition sufficient to protect a customer

from making false inference about the vehicle's actual sales price and thus being taken in by false advertising.

- Amend ch. Trans 139 to clarify that if the dealer proposes to make changes to the warranty and service contract language in the Buyers Guide or in the Purchase Contract, the dealer shall send the proposed changes to DOT, which will reply within a certain time frame approving or denying the changes. The Department recognizes that the vehicle manufacturing industry now offers "manufacturer certified used vehicle programs," which carry certain warranties; and current ch. Trans 139 does not sufficiently accommodate new industry practices. However, the Department proposal retains DOT authority to determine, on a case-by-case basis, an adequate disclosure to the consumer of warranty provisions if they differ from mandatory language in ch. Trans 139.

Analysis and supporting documentation used to determine effect on small businesses

The Department bases the determination of effect on small businesses on comments, questions, and petitions and requests for regulation changes that the Department has received from motor vehicle dealers and their trade association, rental and leasing companies.

Initial Regulatory Flexibility Analysis

Most provisions are already in Department policy. For those that are not currently in policy, the proposals will ease regulatory requirements and costs on motor vehicle dealers and vehicle rental and leasing companies. The Department enforces statute and rules through periodic auditing of motor vehicle records, inspection of motor vehicle dealership facilities, and investigation of consumer complaints. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

Anticipated costs incurred by private sector

The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Notice of Hearing

Workforce Development

Family Supports, Chs. DWD 12-59

CR 08-029

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.148, 49.153 (2), 103.005 (17), and 227.11 (2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules revising chapter DWD 12, relating to W-2 sanction good cause exceptions and notice of payment reductions and affecting small businesses.

Hearing Information

May 15, 2008

Thursday

1:30 p.m.

MADISON

G.E.F. 1 Building

Room A415

201 E. Washington Avenue

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 an alternative format will be made available on request to the fullest extent possible.

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.

Copies of Proposed Rule and Submission of Written Comments and

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

(608) 267-9403

elaine.pridgen@dwd.state.wi.us

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than May 16, 2008, will be given the same consideration as testimony presented at the hearing.

Agency contact person

Margaret McMahan, W-2 Policy Section,
margaret.mcmahan@dwd.state.wi.us, (608) 266-5899.

Analysis Prepared by the Department of Workforce Development

Statutory authority

Sections 49.148, 49.153 (2), 103.005 (17) and 227.11 (2), Stats.

Statutes interpreted

Sections 49.148, 49.151, and 49.153, Stats.

Related statute or rule

45 CFR 261.14, 261.15, and 261.60

Explanation of agency authority

Section 49.153 (1), Stats., as created by 2005 Wisconsin Act 25, provides that before taking any action against a Wisconsin Works (W-2) participant that would result in a 20 percent or more reduction in the participant's benefits or in termination of the participant's W-2 eligibility, a W-2 agency must provide the W-2 participant with written notice of the proposed action and the reasons for the proposed action; make reasonable attempts to explain to the W-2 participant orally in person or by phone the reasons for the proposed action; and allow the participant a reasonable time to rectify the

deficiency, failure, or other behavior to avoid the proposed action. Section 49.153 (2), Stats., provides that the Department shall promulgate rules that establish the procedures for the notice and explanation and that define “reasonable attempts” and “reasonable time” as used in s. 49.153 (1), Stats.

Section 49.148, Stats., provides that for every hour that a W-2 participant in a community service job or transitional placement fails to participate in an assigned activity without good cause, the participant’s grant amount shall be reduced by \$5.15. Good cause is to be determined by the W-2 financial and employment planner (FEP) in accordance with rules promulgated by the department. Good cause shall include required court appearances for a victim of domestic abuse.

Section 49.151, Stats., provides that a participant who refuses to participate 3 times in any W-2 employment position component is ineligible to participate in that component. Among other ways, a participant demonstrates a refusal to participate by failing to appear for an interview or an assigned activity without good cause as determined by the W-2 agency or voluntarily leaves appropriate employment or training without good cause as determined by the W-2 agency.

Plain language analysis

The proposed rule on notice of W-2 payment reductions provides that before taking any action against a participant that would result in a 20 percent or more reduction in the participant’s benefits or in termination of the participant’s eligibility to participate in Wisconsin Works due to noncooperation with W-2 program requirements, a W-2 agency shall provide to the participant written notice of the proposed action and of the reasons for the proposed action. The written notice of a 20 percent or more reduction in the participant’s benefits shall be issued by the W-2 agency no later than the first business day following notification to the W-2 agency of participants subject to a potential 20 percent or more payment reduction. The notice of termination of W-2 eligibility shall be issued no later than 10 days prior to the end of eligibility.

Within 5 business days after providing written notice, the W-2 agency shall explain to the participant orally in person or by phone, or make reasonable attempts to explain to the participant orally in person or by phone, the proposed action and the reasons for the proposed action. Reasonable attempts means at least 2 attempts to contact the participant orally in person or by phone. The explanation by the W-2 agency will inform the participant which requirements were not met or which activities were missed that resulted in a 20 percent or more reduction or termination of eligibility; discuss the participant’s reasons for not complying with participation requirements or not cooperating with other program requirements; explain the opportunity to present good cause for failing to participate or cooperate; and inform the participant of the right to appeal the agency decision, if necessary.

After providing the notice and the explanation or attempting to provide an explanation, the W-2 agency shall allow the participant a reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action. For purposes of this paragraph, “reasonable time” means 7 business days after the oral notification or after the last attempt to make oral notification.

In addition, the Department proposes to amend the rule on good cause for failing to comply with W-2 participation requirements. The current rule provides that good cause for

failing to comply with the W-2 participation requirements includes a required court appearance including a required court appearance for a victim of domestic abuse, unavailability of child care that is necessary to participate in required activities, and other circumstances beyond the control of the participant as determined by the FEP. The W-2 participant must provide timely notification of the good cause reason to the FEP.

The proposed rule adds the following circumstances as good cause for not complying with W-2 participation requirements:

- Lack of transportation with no reasonable alternative, as determined by the FEP. In determining the reasonableness of transportation alternatives, the FEP shall consider the length of the participant’s commute, participant safety, the cost of the transportation relative to the participant’s income, and other relevant factors.
- Participant or W-2 group member’s illness, injury, disability, or incapacity.
- Accommodations that have been determined necessary in a formal assessment are not available to allow the participant to complete the assigned activity.
- Conflict with another assigned W-2 activity or job search attempts.
- Inclement weather that impedes transportation or travel.
- School emergency.
- Domestic violence issues.
- Observance of a religious holiday.
- Routine medical or school appointments that cannot be scheduled at times other than during assigned activities.
- Child’s school holiday, excluding summer break.
- Any day that the worksite or training site is closed due to a site-specific holiday.
- Death in the participant’s immediate family. Immediate family means a participant’s spouse, nonmarital co-parent, step-parents, grandparents, foster parents, children, step-children, grandchildren, foster children, brothers and their spouses, sisters and their spouses, aunts, uncles, sons-in-law, daughters-in-law, cousins, nieces and nephews of the participant or the participant’s spouse or nonmarital co-parent, and other relatives of the participant or the participant’s spouse or nonmarital co-parent if these other relatives reside in the same household as the participant. A participant may be granted good cause for no more than 3 business days if only local travel is necessary to attend the funeral services. A participant may be granted good cause for no more than 7 business days if long-distance travel is required to attend the funeral services. In general, the good cause period may not exceed the week following the death of a member of the participant’s immediate family, but the FEP may lengthen the timeframe for good cause depending upon individual circumstances.
- Other circumstances beyond the control of the participant, but only as determined by the FEP. The FEP shall consider what a reasonable employer may allow under its absence policy and hardships that make completing activities and notifying the agency of missed activities more difficult for W-2 participants.

The participant shall notify the FEP of the good cause reason within 7 business days after an absence from a required activity to prevent a payment reduction. A FEP may request written documentation before accepting a good cause reason

for a participant's absence from required activities if the participant has a pattern of absences of more than 3 consecutive days or more than 5 days in a rolling 30-day period and the FEP has reason to believe that the participant is misusing the good cause policy. An absence means being absent from any one required activity. A pattern of absences may include past absences for which a good cause reason was accepted.

Summary of factual data and analytical methodologies

The proposed rule on notice of W-2 payment reductions or loss of eligibility is based on requirements in s. 49.153, Stats., as created by 2005 Wisconsin Act 25. In order to meet the statutory requirement that written and oral notification be made prior to taking action regarding sanctions or case closures, the Department had to implement stringent timeframes to ensure that these notifications occur before the action is finalized in the Client Assistance for Re-employment and Economic Support (CARES) automation system. Prior to this statutory change, participant notifications took place after the action had already been taken.

The proposed good cause amendments are based on the recommendations in the *W-2 Sanctions Study* released by the Department in December 2004 and the Temporary Assistance to Needy Families (TANF) rules issued February 5, 2008. The purpose of the *W-2 Sanctions Study* was to provide information to support the Department's commitment to ensure that W-2 sanctions are not applied due to factors such as an individual's race, ethnicity, geographic location, employment barriers, or other issues that have not been adequately identified or addressed by the participant's FEP. The *W-2 Sanctions Study* incorporated the findings of a steering committee that consisted of W-2 agency administrators, state administrators, representatives of client advocacy groups, and academics.

Comparison with federal regulations

If an individual refuses to engage in required work, the state must reduce or terminate the amount of assistance payable to the family, subject to any good cause or other exceptions the state may establish. The state must, at a minimum, reduce the amount of assistance otherwise payable to the family pro rata with respect to any period during the month in which the individual refuses to work. The state may impose a greater reduction, including terminating assistance. A state may not reduce or terminate assistance for a single custodial parent caring for a child under age six if appropriate and affordable child care is unavailable within a reasonable distance from the parent's home or worksite.

The TANF rules issued February 5, 2008, provide that a state may count a participant's excused absences for holidays and a maximum of 10 additional days of excused absences in any 12-month period in the federal participation rate. The rule commentary explains that this policy takes into consideration varying worksite and educational practices as well as unexpected events that cause a worksite to close or an individual to miss scheduled hours. A state's flexibility to excuse other absences is not limited. The required federal participation rate is 50 percent to allow the state to balance the goals of the program, the needs of the family, and obligations under the Americans with Disabilities Act.

Comparison with rules in adjacent states

Minnesota. When a participant fails without good cause to comply with program requirements, a notice of intent to sanction is sent to the participant specifying the requirements that were not complied with, informing the participant that the

county agency will impose the sanctions if the participant does not come into compliance within a minimum of 10 days, specifying what must be done to come into compliance, and informing the participant of the opportunity to request a fair hearing or conciliation conference. Within the 10 days, the participant may prevent a sanction by complying with program requirements, demonstrating that she is already in compliance, showing good cause for not complying with the requirements, or requesting a fair hearing or conciliation conference. If the participant does not do any of these within 10 calendar days of the mailing of the notice of intent to sanction, the job counselor must notify the county agency that the assistance payment should be reduced. The county must send a notice of adverse action to the participant at least 10 days before a sanction is imposed. The notice must inform the participant of the sanction that will be imposed, the reasons for the sanction, the effective date of the sanction, and the participant's right to have a fair hearing. If the participant requests a fair hearing or a conciliation conference, sanctions will not be imposed until there is a determination of noncompliance.

Good cause for failure to comply with program requirements exists when:

- (1) appropriate child care is not available;
- (2) the job does not meet the definition of suitable employment;
- (3) the participant is ill or injured;
- (4) a member of the assistance unit, a relative in the household, or a foster child in the household is ill and needs care by the participant that prevents the participant from complying with the employment plan;
- (5) the participant is unable to secure necessary transportation;
- (6) the participant is in an emergency situation that prevents compliance with the employment plan;
- (7) the schedule of compliance with the employment plan conflicts with judicial proceedings;
- (8) a mandatory MFIP meeting is scheduled during a time that conflicts with a judicial proceeding or a meeting related to a juvenile court matter, or a participant's work schedule;
- (9) the participant is already participating in acceptable work activities;
- (10) the employment plan requires an educational program for a caregiver under age 20, but the educational program is not available;
- (11) activities identified in the employment plan are not available;
- (12) the participant is willing to accept suitable employment, but suitable employment is not available; or
- (13) the participant documents other verifiable impediments to compliance with the employment plan beyond the participant's control.

Illinois. No sanction will be imposed the participant is sent a written notice scheduling a good cause determination/reconciliation meeting to determine whether the participant had good cause for his or her failure to comply with requirements and the participant has either failed to attend the meeting or failed to show good cause. If the participant failed to show good cause, the reconciliation process will continue to enable resolving disputes related to participation. The written notice shall explain the purpose of the appointment and the consequences for failure to attend or failure to show good cause. A sanction against participants may be rescinded at any level of the sanction process up through and until the final agency decision, including any

appeal hearing, if the participant establishes good cause. The notice issued for a sanction shall include a description of the acts of noncooperation, including dates where applicable and a statement that the participant's acts were without good cause.

Examples of good cause include but are not limited to:

- 1) temporary illness for its duration;
- 2) court required appearance or temporary incarceration;
- 3) death in the family;
- 4) extreme inclement weather;
- 5) lack of any supportive service, even though the necessary service is not specifically provided under TANF, to the extent the lack of the needed service presents a significant barrier to TANF participation;
- 6) if an individual is engaged in employment and/or training that is consistent with the employment related goals of the program, if such employment and training is later approved by TANF staff;
- 7) failure of department staff or contractor to correctly forward the information to TANF staff;
- 8) failure of the participant to cooperate because of attendance at a test or a mandatory class or function at an educational program, when an education/training program is officially approved by TANF;
- 9) failure of the participant due to his or her illiteracy;
- 10) failure of the participant because it is determined that he or she should be in a different TANF activity;
- 11) non-receipt by the participant of a notice advising him or her of a participation requirement. If the non-receipt of mail occurs frequently, the department shall explore an alternative means of providing notices of participation requests to participants;
- 12) non-comprehension of written and/or oral English;
- 13) child care (or day care for an incapacitated individual living in the same home as a child) is necessary for the participation or employment and such care is not available for a child under age 13;
- 14) failure to participate in a TANF activity due to a verified scheduled job interview, medical appointment for the participant or a household member, or a school appointment for the participant or his or her children;
- 15) the individual is homeless. Homeless individuals have no current residence and no expectation of acquiring one in the next 30 days. This includes individuals residing in overnight and temporary shelters. This does not include individuals who are sharing a residence with friends or relatives on a continuing basis;
- 16) documented circumstances beyond the control of the participant which prevent the participant from completing program requirements; or
- 17) failure to participate in a TANF work activity because of violations of workplace rights due TANF recipients as determined by the U.S. Department of Labor.

Iowa. The department must send a reminder, request, or other notification when there is a potential participation issue. The reminder or request shall identify the participation issue, clarify expectations, attempt to identify barriers to participation, explain the consequences of the limited benefit plan, and offer supervisory intervention. If the department proposes to cancel, reduce, or suspend assistance, it shall give at written notice at least ten calendar days before the date the action would become effective. The notice must include a statement of what action is being taken, the reasons for the intended action, the manual chapter number and subheading

supporting the action and the corresponding rule reference, an explanation of the appellant's right to appeal, and notice that assistance shall not be suspended, reduced, restricted, or canceled, or other proposed adverse action be taken pending a final decision on a timely appeal

- (1) Acceptable instances when a person is excused from participation.
 - a. Illness. When a participant is ill more than three consecutive days or if illness is habitual, staff may require medical documentation of the illness.
 - b. Required in the home due to illness of another family member. Staff may require medical documentation for the same reasons as when a participant is ill.
 - c. Family emergency, using reasonable standards of an employer.
 - d. Bad weather, using reasonable standards of an employer.
 - e. Absent or late due to participant's or spouse's job interview.
 - f. Leave due to the birth of a child.
- (2) Acceptable instances when a person is excused from participation or for refusing or quitting a job or limiting or reducing hours or for discharge from employment due to misconduct.
 - a. Required travel time from home to the job or available work experience or unpaid community service site exceeds one hour each way. This includes additional travel time necessary to take a child to a child care provider.
 - b. Work offered is at a site subject to a strike or lockout, unless the strike has been enjoined or unless an injunction has been issued.
 - c. Violates applicable state or federal health and safety standards or workers' compensation insurance is not provided.
 - d. Job is contrary to the participant's religious or ethical beliefs.
 - e. The participant is required to join, resign from or refrain from joining a legitimate labor organization.
 - f. Work requirements are beyond the mental or physical capabilities as documented by medical evidence or other reliable sources.
 - g. Discrimination by an employer based on age, race, sex, color, handicap, religion, national origin or political beliefs.
 - h. Work demands or conditions render continued employment unreasonable, such as working without being paid on schedule.
 - i. Circumstances beyond the control of the participant, such as disruption of regular mail delivery.
- (3) Jobs that participants have the choice of refusing or quitting or limiting or reducing, or instances when participants are excused for discharge from the job due to misconduct.
 - a. Employment change or termination is part of the family investment agreement.
 - b. Job does not pay at least the minimum amount customary for the same work in the community.
 - c. Employment is terminated in order to take a better-paying job, even though hours of employment may be less than current.
 - d. The employment would result in the family of the participant experiencing a net loss of cash income. Net loss of cash income results if the family's gross income

less necessary work-related expenses is less than the cash assistance the person was receiving at the time the offer of employment is made.

- e. The employment changes substantially from the terms of hire, such as a change in work hours, work shift, or decrease in pay rate.

(4) Instances when problems of participation could negatively impact the client's achievement of self-sufficiency. There may be instances where staff determine that a participant's problems of participation are not described, but may be circumstances which could negatively impact the participant's achievement of self-sufficiency.

Michigan. For the first instance that a worker determines a recipient to be noncompliant the department shall notify the recipient in writing within 3 business days of determining that the recipient is noncompliant. The notification shall include the reason the recipient has been determined to be noncompliant, the penalty that will be imposed for the noncompliance an opportunity for the recipient to meet in person with a caseworker within 10 business days of the determination. If the recipient meets with a caseworker within 10 business days, the caseworker and the recipient shall review and modify the family self-sufficiency plan as determined necessary. The caseworker shall discuss and provide an official warning regarding penalties that shall be imposed if the recipient continues to be noncompliant. The caseworker shall inform the recipient that he or she must verify compliance with his or her family self-sufficiency plan within 10 business days.

For any instance of noncompliance, the recipient shall receive not less than 12 days' notice before penalties are imposed. If the recipient demonstrates good cause for the noncompliance during this period, a penalty shall not be imposed. Good cause is one or more of the following:

- The applicant or recipient suffers from a temporary debilitating illness or injury or an immediate family member has a debilitating illness or injury and the applicant or recipient is needed in the home to care for the family member.
- The applicant or employee lacks child care.
- Either employment or training commuting time is more than 2 hours per day or is more than 3 hours per day when there are unique and compelling circumstances, such as a salary at least twice the applicable minimum wage or the job is the only available job placement within a 3 hour commute per day, not including the time necessary to transport a child to child care facilities.
- Transportation is not available to the participant at reasonable cost.
- The employment or participation involves illegal activities.
- The applicant or recipient is physically or mentally unfit to perform the job, as documented by medical evidence or by reliable information from other sources.
- The applicant or recipient is illegally discriminated against on the basis of age, race, disability, gender, color, national origin, or religious beliefs.
- Credible information or evidence establishes one or more unplanned or unexpected events or factors that reasonably could be expected to prevent, or significantly interfere with, the individual's compliance with employment and training requirements, such as domestic violence, health or safety risk, religion, or homelessness.

- The applicant or recipient quit employment to obtain comparable employment.

Analysis used to determine effect on small businesses

The notice of W-2 payment reductions or case closures does increase the workload of W-2 agency financial and employment planners (FEPs), but there is no significant increase in the cost of administering the W-2 program due to either the notice of payment reductions or good cause amendments.

Initial Regulatory Flexibility Analysis

The proposed rules affect private W-2 agencies but do not have substantial economic effect on these agencies. The DWD Small Business Regulatory Coordinator is Elaine Pridgen, elaine.pridgen@dwd.state.wi.us, (608) 267-9403.

Fiscal Estimate

Summary

The notice of W-2 payment reductions or case closures does increase the workload of W-2 agency financial and employment planners (FEPs), but there is no significant increase in the cost of administering the W-2 program due to either the notice of payment reductions or good cause amendments.

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 08-035

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.155 and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules revising s. DWD 56.04, relating to child care enrollment underutilization and affecting small businesses.

Hearing Information

May 19, 2008

Monday

1:30 p.m.

MADISON

G.E.F. 1 Building

Room D203

201 E. Washington Avenue

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 an alternative format will be made available on request to the fullest extent possible.

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.

Copies of Proposed Rule and Submission of Written Comments

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
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than May 20, 2008, will be given the same consideration as testimony presented at the hearing.

Agency Contact Person

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

Analysis Prepared by the Department of Workforce Development

Statutory authority

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

Statutes interpreted

Section 49.155, Stats.

Related statutes or rules

Section 48.65, Stats, and Chapters HFS 45, 46, and 55; Section 48.651, Stats., and Chapter DWD 55

Explanation of agency authority

The Department administers the child care subsidy program under s. 49.155, Stats., and reimburses child care providers for services provided pursuant to s. 49.155 (3m), Stats.

Plain language analysis

The current s. DWD 56.04 (2) (d) provides that a child care administrative agency shall authorize payment to licensed group and family day care centers based on authorized units of service except as follows:

- The agency may authorize payment to licensed providers based on units of service used by each child up to the maximum number of authorized units, with the reimbursement rate increased by 10% to account for absent days, if the schedule of child care to be used is expected to vary widely.
- The agency may authorize payment to licensed providers based on units of service used by each child, up to the maximum number of authorized units, if the agency has documented 3 separate occasions where the provider significantly overreported the attendance of a child.

The current methodology for authorizing payment to licensed providers has caused the child care subsidy program to pay for significant amounts of time when care is not actually being provided. The emergency and proposed rules attempt to control costs by reducing payments to licensed child care providers for authorized child care services that are significantly underused. The emergency and proposed rules repeal the presumption of enrollment authorization for

licensed providers and provides that a local child care administrative agency shall authorize on either an enrollment or attendance basis as follows:

- The agency shall authorize the number of hours needed on an enrollment basis if the need for care is anticipated to be approximately the same number of hours each week.
- The agency shall authorize payment based on the hours of actual attendance by each child if the need for care is anticipated to vary from week to week or if the child has a history of variable attendance.
- The agency may authorize payment on the hours of actual attendance if the agency has documented 3 separate occasions where the provider significantly overreported the attendance of a child.

For any week in which a child whose authorized payments are on an enrollment basis attends less than 50% of the authorized hours of care, payment shall be made on the basis of actual hours of attendance used, unless the agency determines that the absence is for a reason approved by the Department, such as short-term illness of the child or death in the family. This policy does not apply to a child with a special needs authorization.

Payment to certified providers is based on a child's attendance and remains unchanged in this rule.

The emergency and proposed rules also increase the penalties for a provider who submits false or inaccurate attendance reports. The current s. DWD 56.04 (5) (c) allows for the child care administrative agency to refuse to issue new child care authorizations to a provider for a period of time not to exceed 6 months, revoke existing child care authorizations to the provider, or refuse to issue payment to the provider until the violation is corrected. The rule will also provide additional penalties in the following situations:

- If it is the provider's second documented instance of submitting an inaccurate attendance report or the inaccurate report resulted in or would have resulted in an overpayment of \$1,000 or more, the agency may refuse to issue new child care authorizations to a provider for a period of time not to exceed 1 year.
- If it is the provider's third or subsequent documented instance of submitting an inaccurate attendance report or the inaccurate report resulted in or would have resulted in an overpayment of \$5,000 or more, the agency may refuse to issue new child care authorizations to a provider for a period of time not to exceed 5 years.

The emergency rule was effective March 30, 2008.

Summary of factual data and analytical methodologies

The Department has reestimated the potential current year deficit in the child care subsidy program to be slightly less than the estimate from February (which was included with the emergency rule filed on March 18th). In the intervening 2 1/2 months, based on additional weeks of actual subsidy expenditures we have seen a slight decrease in costs and are now projecting a State Fiscal Year deficit of \$16.2 million. This reduction, while meaningful as a \$2.4 million decrease to the deficit, represents a change of less than 1.0% (0.7%) of the total projected subsidy expenditures for the fiscal year.

Due to this projected budget shortfall, the Department is reinstating the child care enrollment underutilization policy that was in effect April to October 2007. The underutilization policy was implemented in response to a significant 06-07 budget shortfall and was withdrawn in October 2007 upon passage of 2007 Wisconsin Act 20, although Act 20 does not affect the Department's authority for the policy. The *Legislative Fiscal Bureau: Summary of Budget Provisions*

states “DWD will be permitted to continue the attendance-based policy and to modify recipients’ co-payments, as under prior law.” (page 589, <http://www.legis.state.wi.us/lfb/2007-09budget/Act%2020/dwd.pdf>)

By paying the hourly rate for actual attendance to child care providers when attendance is under 50% of the authorized level for the child care subsidy program, the Department will avoid paying for significant amounts of time where care is not actually being provided. The Department has revised the estimate of annual savings from implementing the child care enrollment underutilization policy. This revised savings estimate reflects further analysis of the interaction of other child care payment policies on the proposed underutilization policy. Based on adjustments for these interactions, when comparing the amount currently paid for enrollment authorizations against the amount that would be paid if underutilized authorizations of 50% or less are paid for actual hours of care, the Department is revising the estimate of annual savings from \$18.5 million to \$13.0 million.

Comparison with federal regulations

There are no applicable federal regulations.

Comparison with rules in adjacent states

Michigan. A provider may only receive payment for a child’s hours of attendance, except for absences due to the child’s illness, not to exceed 2 consecutive weeks, and state holidays.

Illinois. Payment to licensed and license-exempt child care centers are based on authorized days if the total of days attended for all publicly-funded children at a center location are 80% of the authorized days for the month.

Payment to licensed home providers are based on authorized days if the total of days attended for all children in a family are 80% of the family’s authorized days for the month.

Payment to license-exempt home providers are based only on attendance.

Iowa. Payment is based on authorized days with payment allowed for a child not in attendance not to exceed 4 days per calendar month.

Minnesota. Payment is based on authorized days except child care providers may not be reimbursed for more than 25 full-day absent days per child, excluding holidays, in a fiscal

year, or for more than 10 consecutive full-day absent days, unless the child has a documented medical condition that causes more frequent absences.

Analysis used to determine effect on small businesses

The Legislature and Governor set the funding level for the Wisconsin Shares child care subsidy program. These rules do not affect the amount of funding for the program. All of the allocated funding will be spent as subsidies for child care for the children of working families. We do not anticipate that the proposed rules will in any way change the extent to which these dollars are spent on small businesses.

Initial Regulatory Flexibility Analysis

The rule will affect small businesses but will not have a significant economic impact on a substantial number of small businesses as defined in s. 227.114 (1), Stats.

Fiscal Estimate

Summary

The Department has revised the estimate of annual savings from implementing the child care enrollment underutilization policy since filing the fiscal estimate for the emergency rule on March 18. This revised savings estimate reflects further analysis of the interaction of other child care payment policies on the proposed underutilization policy. Based on adjustments for these interactions, when comparing the amount currently paid for enrollment authorizations against the amount that would be paid if underutilized authorizations of 50% or less are paid for actual hours of care, the Department is revising the estimate of annual savings from \$18.5 million to \$13.0 million.

State fiscal effect

Decrease in costs.

Local fiscal effect

None

Fund sources affected

GPR, FED, PRS, SEG

Affected ch. 20 appropriations

Section 20.445 (3), Stats.

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.

Administration

CR 07–078

A rule-making order revising ch. Adm 43, relating to non-municipal electric utility low-income assistance fees.

Administration

CR 07–079

A rule-making order repealing ch. Adm 44, relating to energy conservation and efficiency and renewable resources programs.

Administration

CR 07–080

A rule-making order revising ch. Adm 45, relating to low income assistance public benefits.

Agriculture, Trade and Consumer Protection

CR 07–067

A rule-making order revising chs. ATCP 140, 141, 147 and 148, relating to agricultural marketing orders and marketing boards.

Commerce

Housing Assistance, Chs. Comm 150—

CR 08–008

A rule-making order revising ch. Comm 156, relating to a grant program for rehabilitation and recycling of manufactured housing.

Natural Resources

Fish, Game, etc., Chs. NR 1—,

CR 07–013

A rule-making order creating s. NR 45.075, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Natural Resources

Environmental Protection – Water Regulation, Chs. NR 300—

CR 07–112

A rule-making order revising ss. NR 345.03 and 345.04, relating to general permits for dredging in Great Lakes navigable waterways.

Natural Resources

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

CR 07–104

A rule-making order revising chs. NR 405, 407, 408 and 484, relating to major source definition and affecting small business.

Podiatrists Affiliated Credentialing Board

CR 07–103

A rule-making order creating s. Pod 3.02 (1) (e), relating to continuing medical education programs.

Public Instruction

CR 08–001

A rule-making order creating ch. PI 33, relating to grants for nursing services.

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.

Commerce

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

CR 07-101

A rule-making order revising ch. Comm 130, relating to the manufacturing investment credit.
Effective 6-1-08.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 07-074

A rule-making order revising chs. NR 19 and 20, relating to the control of fish diseases and invasive species.
Effective 6-1-08.

Natural Resources

Air Pollution Control, Chs. NR 400—

CR 07-088

A rule-making order 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.
Effective 6-1-08.

Pharmacy Examining Board

CR 07-097

A rule-making order amending s. Phar 7.02, relating to prescription labels.
Effective 6-1-08.

Pharmacy Examining Board

CR 07-099

A rule-making order repealing s. Phar 7.015 (3) (d) and creating s. Phar 7.015 (2) (q), relating to the transfer of a prescription drug by a pharmacy technician.
Effective 6-1-08.

Regulation and Licensing

CR 07-098

A rule-making order revising chs. RL 83 and 86 and Appendix I of ch. RL 87, relating to the uniform standards of professional appraisal practice (USPAP) for real estate appraisers.
Effective 6-1-08.

Revenue

CR 07-109

A rule-making order amending s. Tax 8.63 (1) and creating s. Tax 8.63 (1m) and (7), relating to liquor wholesaler warehouse facilities.
Effective 6-1-08.

Workforce Development

Family Supports, Chs. DWD 12-59

CR 07-071

A rule-making order revising ch. DWD 55, relating to child care certification and affecting small businesses.
Effective 6-1-08.

Workforce Development

Public Works Construction Contracts, Chs. DWD 290—

CR 08-003

A rule-making order revising 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.
Effective 6-1-08.

Rules Published with this Register and Final Regulatory Flexibility Analyses

The following administrative rule orders have been adopted and published in the April 30, 2008, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.

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

Agriculture, Trade and Consumer Protection **CR 07-037**

A rule-making order revising chs. ATCP 60, 69, 70, 71, 75, 77, 80, 81, 82 and 85, relating to food and dairy license and reinspection fees. Effective 5-1-08.

Summary of Final Regulatory Flexibility Analysis

This rule increases existing license and reinspection fees for milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy, food or water testing laboratories, milk haulers, buttermakers, cheesemakers and butter or cheese graders.

This rule affects all milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy and food testing laboratories, milk haulers, buttermakers, cheesemakers, and butter and cheese graders licensed by the department. Many of these businesses are "small businesses" as defined in s. 227.114(1), Stats.

This rule increases annual license fees, reinspection fees, and milk procurement fees for all affected businesses, including small businesses, beginning with fees that are due on or after July 1, 2008. This rule will increase overall dairy and food industry costs by a combined total of approximately \$683,000 per year. Costs for individual businesses will depend on business size and type. Because of competitive market conditions, it may be difficult for affected businesses to increase prices to recover these costs.

The adopted fee increases will have a significant but not dramatic impact on affected businesses. In the multi-billion dollar dairy and food industries, license fees comprise a relatively small overall share of industry costs. DATCP has worked to maintain a fair and equitable license fee schedule.

Fees are based on actual food safety costs related to each license sector. Fees are also based on business size, food product type, and type of food handling operations. Smaller businesses generally pay lower fees than larger businesses. Businesses that produce lower-risk foods or engage in lower-risk activities generally pay lower fees than businesses that produce higher-risk foods or engage in higher-risk activities.

This rule increases food safety license fees, but it does not change other license requirements. This rule requires no additional recordkeeping and no added professional services to comply.

DATCP has not incorporated a small business enforcement policy in this rule, but it has adopted a separate rule on that subject (see subch. VII of ch. ATCP 1). DATCP will seek voluntary compliance. However, food and dairy businesses must pay required license fees in order to obtain a license from DATCP.

Summary of Comments by Legislative Review Committees

On December 18, 2007, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Higher Education and to the Assembly Committee on Agriculture. The Senate Committee on Agriculture and Higher Education held a hearing on January 30, 2008, and took no action. The Assembly Committee on Agriculture held a hearing on January 10, 2008, an information only hearing on February 7, 2008 and an Executive Session on February 12, 2008, and sent the rule back to DATCP requesting modifications to the rule. The Department considered this request and made the following modifications to the rule:

- Reduced by 25% the estimated annual increase in the aggregate amount of fees collected under the proposed rule.
- Allocated the reductions in fees paid by individual types of dairy and food businesses.

The requested modifications were approved by the DATCP Board on February 13, 2008 and returned to the Assembly Committee on Agriculture on February 15, 2008. After receiving the rule with the requested modifications, neither the Assembly nor the Senate Committee took further action.

Commerce **CR 07-008**

A rule-making order revising ch. Comm 67, relating to rental unit energy efficiency. Effective 5-1-08.

Summary of Final Regulatory Flexibility Analysis

Section 101.122, Stats., directs the Department to review the energy efficiency requirements for rental units for any new energy conservation technologies. The proposed rules of Clearinghouse Rule No. 07-008 are minimum requirements to meet this directive of the statutes, and the modifications to the technical requirements were for clarification purposes. The fees to operate this program have been modified to more accurately reflect the program function and costs. The Department believes there is no significant impact on small business.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources **CR 06-005**

A rule-making order repealing and recreating ch. NR 149, relating to laboratory certification and registration. Effective 9-1-08.

Summary of Final Regulatory Flexibility Analysis

A small number of the 428 regulated laboratories would fit the definition of "small business". Many of the proposed

changes are clarifications of the code and will not create new requirements. A delayed effective date has been incorporated into the rule to allow the Department sufficient opportunity for outreach efforts to further clarify the rule revision. Section 299.11, Stats., does not allow for less stringent schedules, deadlines or reporting requirements for different types of laboratories. Small businesses that experience undue hardship as a result of these requirements can apply to the Department for a variance from non-statutory requirements under s. NR 149.12.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On January 16, 2008, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any requests for modifications as a result of this hearing.

Natural Resources CR 07-035

A rule-making order revising chs. NR 10, 12, and 16, relating to hunting, nuisance wild animal removal, and captive wildlife. Effective 5-1-08.

Summary of Final Regulatory Flexibility Analysis

The revisions to chs. NR 10, 12 and 16 pertain to hunting, trapping and nuisance wild animal removal. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses. Therefore, a final regulatory flexibility analysis was not required.

Summary of Comments by Legislative Review Committees

The rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On September 27, 2007, the Assembly Committee on Natural Resources held a public hearing and requested the Department to make a modification to the rule. At its December 5, 2007 meeting, the Natural Resources Board added a provision to s. NR 10.13 (1) (b) 15. that the use of cable restraints for bobcat would sunset following the 2009 season.

Natural Resources CR 07-040

A rule-making order revising chs. NR 400, 406, 407 and 410, relating to construction permits, portable source relocation and affecting small business. Effective 5-1-08.

Summary of Final Regulatory Flexibility Analysis

Based on the context of the rule changes, which are already in place at the federal level, there should not be a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On December 19, 2007, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments or a request for modification as a result of this hearing.

Natural Resources CR 07-045

A rule-making order revising chs. NR 466 and 484, and creating ch. NR 460 Appendix JJJJ, relating to national emission standards for hazardous air pollutants for paper and other web surface coating processes. Effective 5-1-08.

Summary of Final Regulatory Flexibility Analysis

Since the proposed rule is required by law to be identical to the existing federal rule, the Department has no flexibility to make any substantial changes to the proposed rule. Because all affected sources must comply with the federal rule, the proposed state rule will have no additional adverse economic impact on small businesses or any other affected source.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On December 19, 2007, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments or a request for modification as a result of this hearing.

Natural Resources CR 07-075

A rule-making order amending s. NR 25.06 (2) (b) 1., relating to commercial fishing for yellow perch in zone 1 (Green Bay). Effective 5-1-08.

Summary of Final Regulatory Flexibility Analysis

No additional compliance or reporting requirements will be imposed as a result of these rule changes. Commercial fishing businesses would be directly affected by the rule, but would not be subject to any new reporting, bookkeeping or other procedures. No special skills would be required for compliance with the rule.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. On March 6, 2008, the Assembly Committee on Natural Resources held a public hearing and then waived its jurisdiction on the rule.

Revenue CR 07-087

A rule-making order revising chs. Tax 61 and 63, creating billing terms options for Wisconsin lottery retailers, creating additional shipping options at cost in situations where the retailer requests those options, correcting minor requirements in the lottery retailer performance program, creating rules relating to the voluntary disclosure requirements of 2003 Wis. Act 145, and correcting minor technical problems. Effective 5-1-08.

Summary of Final Regulatory Flexibility Analysis

Each of the major substantive changes in this rule is addressed separately.

Distribution Controls

Impact on small business: It is difficult to estimate exactly how much a given retailer would experience in charges for additional order(s) in a given week. However, the expenses would be consistent with those currently experienced by the

lottery. For example, an additional order of 6 packs might cost \$3.44 total (\$3.09 for the first pack, and \$.07 for each pack after the first.) Variations in the count and weight of packs in each order, as well as the current pricing structure itself, will cause some variation in the expense per order shipped. The variations will be generally limited to less than an estimated 10% of current cost, for the foreseeable future.

It is important to note that the lottery currently *does not* have plans to implement this rule language regarding retailers paying for additional orders. To do so would require the lottery to have delivery day assignments in place as of the promulgation date; this will not be the case. Instead, the rule order has been drafted using conditional language, and is being proposed now to ensure that the authority is available should the improvements under consideration prove workable. For example, computer software is being reviewed that offers the potential to track extra orders per week, for which the cost could be programmed to be billed to the retailer. Having the authority clearly stated well before implementation will provide the lottery with useful preparation time, in which retailers can be notified and given ample opportunity to review the initiative.

Conclusion: As of the date of promulgation, and for at least a calendar year after, there will be no effect on lottery retailers. Any intended activation of the rule would only be completed after significant notice of the event to all retailers, with retailers being given meeting opportunities with Lottery administration.

Reselling Controls

Impact on small business: It is difficult to identify the number or range of impact these self-styled ‘retailers’ have upon lottery retailers or players, but some loss of retail sales opportunity is occurring. The Wisconsin Lottery has proposed language that permits ‘friend and family’ purchasing but bans subscription services, and has also adopted language from the adjacent states to address issues of “service fees” and “charging to validate”, found under Sections 3, 4 and 5.

Conclusion: The impact upon lottery retailers of this language change should be negligible to slightly positive. The language does not ban ‘friend or family’ purchases as gifts (which would be sold by retailers), but does clarify that it is illegal for unscrupulous parties to pretend to be a legitimate retailer when they are not or to apply service fees or validation charges to players.

Billing Terms Authority

Impact on small business: While retailers receive more time, under new terms, to sell through a pack of tickets, they could in theory be responsible for a somewhat larger sticker price for each pack. This is because lottery intends to greatly simplify the accounting of lottery packs by eliminating the discounting of GLEPS that normally occurs when the pack is billed. This, and its related cross-redeem calculations, are the source of much confusion among retailers accountants. The lottery intends to keep the commission discounting on the pack price, but not GLEPS discounting. Therefore, instead of a pack of 400 tickets that costs \$212.50 the week after it is shipped, the retailer will be billed for a pack of 400 tickets that costs \$375.00 the fourth week after it is shipped, allowing more time for the retailer to sell the product. Also, the retailer will still be receiving credits each week for winners actually scan-validated, consistent with how the current system provides credits. The combination of more time to sell the product and the continuation of currently-offered credits for validations will help ease the financial impact of the perceived sticker price of a pack.

Conclusion: Ultimately, the combination of new billing terms, reinforced by new pack size, should help ease the financial and labor burdens that lottery billing currently places upon retailers. The impact will ultimately be a reduction in expense per pack, once all the aspects of net 28 days billing terms are in place. Therefore, the impact on lottery retailers will be slightly to significantly positive, depending on each retailer’s sales history.

Summary of Comments by Legislative Review Committees

No comments were reported.

Sections Affected by Rule Revisions and Corrections

The following administrative rule revisions and corrections have taken place in **April 2008**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Agriculture, Trade and Consumer Protection

Ch. ATCP 60

- S. ATCP 60.02 (4) (a)
- S. ATCP 60.04 (2) (a) and (b)

Ch. ATCP 69

- S. ATCP 69.01 (5)
- S. ATCP 69.02 (5)

Ch. ATCP 70

- S. ATCP 70.03 (2m) (a) to (e), (2n), (2r) (b)

Ch. ATCP 71

- S. ATCP 71.02 (3) (a) to (d)

Ch. ATCP 75

- S. ATCP 75.02 (4) (b)

Ch. ATCP 77

- S. ATCP 77.06 (1) (a), (b) and (d)
- S. ATCP 77.23 (3) (a), (c) to (e)

Ch. ATCP 80

- S. ATCP 80.04 (1) (b), (2) (b), (3) (b), (5) (b)

Ch. ATCP 81

- S. ATCP 81.02 (3)

Ch. ATCP 82

- S. ATCP 82.02 (4) and (5) (b)
- S. ATCP 82.04 (5) (a) and (b)

Ch. ATCP 85

- S. ATCP 85.07 (2)

Commerce

Ch. Comm 2

- S. Comm 2.35

Ch. Comm 67 (Entire chapter)

Natural Resources

Ch. NR 25

- S. NR 25.06 (2) (b)

Ch. NR 149 (Entire chapter)
Ch. NR 400

- S. NR 400.02 (162) (a)

Ch. NR 406

- S. NR 406.04 (2m) (b)
- S. NR 406.15 (3) (a)

Ch. NR 407

- S. NR 407.02 (3e), (4) (b), (6) (b)
- S. NR 407.10 (4) (a)

Ch. NR 410

- S. NR 410.03 (4)

Ch. NR 466

- S. NR 466.21
- S. NR 466.22
- S. NR 466.23
- S. NR 466.24
- S. NR 466.25
- S. NR 466.26

Ch. NR 484

- S. NR 484.04 (9), (21m) and (24)
- S. NR 484.11 (6) (b)

Revenue

Ch. Tax 61

- S. Tax 61.02 (1m), (6)
- S. Tax 61.08 (11) (h), (j), (k), (13) (c), (e), (14) (bm), (c), (d), (e), (15), (17) (a), (b), (18), (21) (intro.), (g), (22)
- S. Tax 61.085 (3) (a), (4) (a), (b)
- S. Tax 61.10 (title) and (2)
- S. Tax 61.25

Ch. Tax 63

- S. Tax 63.06 (11) (c) and (d)

Editorial Corrections

Corrections to code sections under the authority of s. 13.92 (4) (b), Stats., are indicated in the following listing.

Commerce

Ch. Comm 67

- S. Comm 67.02 (2) (f)

- S. Comm 67.04 (7)

- S. Comm 67.11 (2) (c)

Government Accountability Board

Entire Code

Natural Resources

Ch. NR 149

S. NR 149.13 (4) (d)

Ch. NR 466

S. NR 466.09 (2) (b)

S. NR 466.24 (3) (f)

Sections Affected by Corrections Not Published

Corrections under s. 13.92 (4) (b) 7., Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Legislative Reference Bureau Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
NR 507.17 (5)	NR 149.11 (5)	NR 149.48 (2)
NR 507.26 (3) (b) 1.	NR 149.11 (5)	NR 149.48 (2)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 244. Relating to a Wisconsin Manual for Courts-Martial.

Executive Order 245. Relating to the Creation of the Wisconsin Lincoln Bicentennial Commission.

Executive Order 246. Relating to a Special Session of the Legislature.

Public Notices

Health and Family Services

Medical Assistance Reimbursement to Hospitals

The State of Wisconsin reimburses hospitals for medical services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and Chapter 49.43 to 49.47, Wisconsin Statutes.

The Wisconsin Department of Health and Family Services administers this program that is called Medicaid or Medical Assistance (MA). Federal statutes and regulations require state plans, one for outpatient services and one for inpatient services, that provide the methods and standards for paying for hospital outpatient and inpatient services.

State plans are now in effect for the reimbursement of outpatient hospital services and inpatient hospital services. The Department is proposing to make changes to the provisions contained in the inpatient plan effective May 1, 2008.

Hospital Services

The proposed change in the state plan for reimbursement for inpatient services is to institute supplemental disproportionate share hospital (DSH) payments for state and county hospitals.

There is a separate DSH allotment for hospitals owned and operated by the State of Wisconsin and for hospitals owned and operated by county governments of the State of Wisconsin. To be eligible for these separate DSH payments, such hospitals must meet minimum federal requirements for Medicaid DSH payments as specified in section 1923(b) and (d) of the Social Security Act [42 U.S.C. 1396r-4(b) and (d)].

State and county owned and operated hospitals in the State of Wisconsin will receive a DSH payment adjustment for the costs of uncompensated care as defined in section 1923(g)(1)(A) of the Social Security Act [42 U.S.C. 1396r-4(g)(1)(A)]. This amount shall not exceed the costs incurred by the hospital during the applicable year of furnishing hospital services (net of payments under Title XIX, other than under section 1923, and net of any self-pay amounts by uninsured patients) with respect to individuals who are eligible under Title XIX or have no health insurance or other third party health coverage for hospital services during the year.

Copies of Proposed Changes and Proposed Payment Rates

Copies of the proposed changes will be sent to every county social services or human service department main office where they will be available for public review. For more information, interested persons may fax or write to:

Bureau of Fiscal Management
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309
Fax: (608) 266-1096

Written Comments

Written comments on the proposed changes are welcome and should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. at:

Division of Health Access and Accountability
Room 350, State Office Building
One West Wilson Street
Madison, WI

Transportation

Public Notice of Effective Date for Statutes Implementing REAL ID and Enumerated in Section 9448 (1) of 2007 Wisconsin Act 20

The Department of Transportation hereby publishes notice as provided in s. 85.515(2)(a), Stats., that it will not be ready to complete full implementation of the provisions of the federal REAL ID Act, as incorporated into 2007 Wisconsin Act 20, by May 11, 2008. 2007 Wisconsin Act 20 made numerous changes to driver licensing and identification card laws in order to comply with the federal REAL ID law. Federal law requires those changes to take effect on May 11, 2008, but the federal government has granted Wisconsin a waiver of that effective date until December 31, 2009. On January 29, 2008, the federal Department of Homeland Security issued federal REAL ID regulations applicable to Wisconsin. Delaying the effective date of the REAL ID provisions of 2007 Wisconsin Act 20 will provide the Department of Transportation time to implement those regulations.

By this public notice, and under the authority of s. 85.515(2)(a), Stats., as created by Section 2550m of 2007 Wisconsin Act 20, Frank J. Busalacchi, Secretary of the Wisconsin Department of Transportation, declares that the Department will not be ready to complete full implementation of the provisions of the federal REAL ID Act by May 11, 2008.

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