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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. **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
Hearing Date: May 30, 2008

2. **EmR0822** – 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 farm–raised deer herd as brucellosis–free or tuberculosis–free, or both, based on herd test results provided by the farm–raised deer keeper. Certification is voluntary, but facilitates sale and movement of farm–raised 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 farm–raised deer keepers 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 farm–raised deer keepers this year, pending the adoption of permanent rules.

Publication Date: July 9, 2008
Effective Date: July 9, 2008
Expiration Date: December 6, 2008
Hearing Date: August 1, 2008

Children and Families (2)

(Formerly Workforce Development)

Family Supports, Chs. DWD 12 to 59

1. **EmR0814** – Rule adopted repealing EmR0807 affecting s. **DWD 56.04**, 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 implemented the child care enrollment underutilization emergency rule as a cost-saving measure effective March 30, 2008. 2007 Wisconsin Act 226 provides \$18.6 million to address the fiscal year 2007–08 Wisconsin Shares funding shortfall. The Governor’s veto message directs the Department of Workforce Development to “suspend the current attendance-based rule for the remainder of fiscal year 2007–08.” The Department is repealing the enrollment underutilization emergency rule and will be withdrawing the corresponding proposed permanent rule.

Publication Date: May 25, 2008
Effective Date: May 25, 2008
Expiration Date: October 22, 2008
Hearing Date: June 27, 2008

2. **EmR0821** – Rules adopted creating ss. **DWD 40.02 (12m), 40.05, and DWD 40 Appendix D**, relating to establishment of birth cost orders based on child support guidelines.

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:

The federal Office of Child Support Enforcement (OCSE) has notified Wisconsin that OCSE will not certify the state’s request for federal income tax refund offset for birth cost orders that have not been set in accordance with the child support guidelines in Chapter DWD 40, which take into consideration the payer’s ability to pay.

Federal income tax refund offset is one of the primary tools for collection of birth cost orders owed to the State of Wisconsin. In calendar year 2007, the child support program collected \$11,481,000 in birth costs through federal income tax refund offset. Of the nearly \$11.5 million collected, approximately \$6.62 million was returned to the federal government to reimburse Medicaid costs, \$1.72 million was used by county child support agency programs to benefit children in the state, and the remaining \$3.14 million was returned to the state Medicaid program.

Publication Date: June 27, 2008
Effective Date: June 27, 2008
Expiration Date: November 24, 2008
Hearing Date: July 29, 2008

Commerce

Uniform Dwelling, Chs. Comm 20–25
Wisconsin Commercial Building Code, Chs. Comm 60–66

EmR0826 – Rules adopted to renumber s. **Comm 66.0911**; to amend s. **Comm 20.24 (1) and (2)**; and to create ss. **Comm 21.095, 20.24 Table 20.24–14, 62.1200, 62.3500 (3) (e), 66.0911 (title) and (2)**, relating to carbon monoxide alarms and affecting small business.

Exemption From Finding of Emergency

Under the nonstatutory provisions of 2007 Wisconsin Act 205, the Department of Commerce is 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, neither the department of commerce or the department of health services is 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 installation and maintenance of carbon monoxide alarms in buildings accommodating certain types of residential occupancies and within which fuel burning appliances are located. Residential occupancies include tourist rooming houses, bed and breakfast establishments, and any public building that is used for sleeping or lodging, such as, hotels, motels, condominiums, apartment buildings, dormitories, fraternities, sororities, convents, seminaries, community based residential facilities, home shelters, but not hospitals and nursing homes. The Act requires the installation of carbon monoxide alarms in new buildings as of October 1, 2008. The owners of existing buildings will have until April 1, 2010 to install the carbon monoxide alarms. The Act also provides for the omission of carbon monoxide alarms in certain instances which are further clarified by the administrative rules.

Publication Date: September 10, 2008
Effective Date: October 1, 2008
Expiration Date: February 28, 2009
Hearing Date: October 14, 2008

Commerce (2)

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

1. **EmR0823** – Rules adopted amending **Comm Table 108.6–1, sections Comm 108.07 (5), 108.22 (1), and 154.06 (intro.)**, relating to emergency assistance grants in the community development block grant program, 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 health, safety, and welfare. The facts constituting the emergency are as follows.

Currently under sections Comm 108.06, 108.07, and 108.22 of the Wisconsin Administrative Code, as promulgated under sections 560.04, 560.045, and 560.9809 of the Statutes, the Department may annually use up to 5 percent of its federal Community Development Block Grant (CDBG) funds to repair or replace public infrastructure or

facilities, or for emergency services necessitated by a natural disaster or catastrophic event. Also under sections Comm 108.07 and 108.22, the maximum amount of CDBG funds that the Department can award to any local government for a natural disaster or catastrophic event is \$500,000.

Currently under section Comm 154.06, as promulgated under sections 560.02 (4) and 560.9809 (2) of the Statutes, the Department may annually use up to \$2,000,000 of CDGB funds to address emergency housing needs caused by natural disasters or catastrophic events.

Because of the unprecedented levels of damage to public infrastructure and facilities from the severe storms and widespread flooding that occurred throughout the State in June 2008, the need for emergency assistance to communities far exceeds the \$1.35 Million of CDBG funding that results from the above 5–percent limit, and the need for emergency housing assistance for low and moderate income households far exceeds the above \$2,000,000. Communities and households in 28 of the 30 counties where the Governor has declared a state of emergency are eligible for this CDBG program assistance.

This emergency rule repeals the above limits of 5 percent, \$500,000 and \$2,000,000. This will enable the Department to (1) use any available CDBG funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding; and (2) base the award amounts on the scope of the damages and destruction in the community and on the funds available.

Publication Date: July 16, 2008
Effective Date: July 16, 2008
Expiration Date: December 16, 2008
Hearing Date: August 27, 2008

2. **EmR0831** – Rules adopted creating section **Comm 113.03 (4)**, relating to allocation of volume cap on tax–exempt private activity bonds.

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. Because of widespread disruption of the housing markets, Congress has enacted the Housing and Economic Recovery Act of 2008 (the “Act”), which contains various relief measures relating to housing. Section 3021 of the Act creates a special one–time additional allocation of volume cap for calendar year 2008, to be used for the issuance of single–family housing bonds and multifamily housing bonds no later than December 31, 2010.

Under section 560.032 of the Statutes, the Department of Commerce is charged with allocating to Wisconsin issuers the private activity bond volume cap allocated to Wisconsin under the Internal Revenue Code of 1986, 26 USC 146. This emergency rule is necessary to implement the special allocation of volume cap under the Act, as described above.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Publication Date: September 27, 2008
Effective Date: September 27, 2008
Expiration Date: February 24, 2009
Hearing Date: October 27, 2008

Corrections

EmR0812 – Rules adopted revising **s. DOC 332.19**, relating to the establishment of a sex offender registration fee to partially offset the costs of monitoring persons who are required to register as sex offenders.

Finding of Emergency

The department of corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is: 2007 WI Act 20, section 3132, amended s. 301.45 (10), Stats., in three ways which requires an immediate amendment of s. DOC 332.19.

First, the newly amended s. 301.45 (10), Stats., expands the persons whom the department of corrections may require to pay an annual sex offender registration fee. Previously, the department was limited to assessing the fee only against those persons who were required to register and who were in its custody or under its supervision as a person on probation, parole, or extended supervision. The new law permits the department to require all persons who are required to register as a sex offender to pay an annual fee.

Second, the new law limits the use of the collected sex offender fees to partially offset the costs of monitoring sex offenders. Previously, the department was authorized to use the collected fees to partially offset the costs of monitoring those persons on probation, parole, or extended supervision, regardless of whether they were required to register as sex offenders.

Third, the legislature increased the maximum annual rate from \$50 to \$100. If the rule is not amended promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of monitoring persons who are required to register as sex offenders. This could result in a lessening of supervision due to budget limitations.

The purpose of the emergency rule is to amend the current rule to require all persons who are required to register as sex offenders under s. 301.45 to pay the annual fee which is used to partially offset the costs of monitoring registrants. The emergency rule also increases the annual rate to \$100. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of fees while permanent rules are being developed.

Publication Date: May 15, 2008
Effective Date: May 15, 2008
Expiration Date: October 12, 2008
Hearing Date: July 24, 2008

Financial Institutions – Securities

EmR0829 – Rules adopted to **amend s. DFI–Sec 4.06 (2) (i) and to create ss. DFI–Sec 4.06 (1) (v), 5.06 (14) and Chapter DFI–Sec 10**, relating to making it a dishonest or unethical practice for securities licensees to make use of misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

Finding of Emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the rules are necessary for the immediate

preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

The Division is taking immediate, emergency–rule action to protect seniors in Wisconsin from being misled through the use by securities licensees of designations and credentials that imply or represent that a person has special expertise, certification, or training in financial planning for seniors, but where such designations and/or credentials are either non–existent or do not involve significant education, testing, training or experience, and in reality are marketing ploys.

Publication Date: September 15, 2008
Effective Date: September 15, 2008
Expiration Date: February 12, 2009

Government Accountability Board

EmR0830 – Rules adopted repealing and recreating **Chapter GAB 4**, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

Finding of Emergency

Pursuant to section 227.24, Stats., the Government Accountability Board finds that an emergency exists in the Board's May 5, 2008 decision to decline to reaffirm the administrative rule section EIBd 4.01 because the rule was inconsistent with the requirements of its enabling statute, s. 7.41, Stats. The statute states that any member of the public is allowed to be present at the polls on Election Day to observe; however, it does not specify standards of conduct they must abide by.

The Board further finds that given the intense interest in the fall election, the expected high turnout, the increasing use of observers in the polling place, and the comments of municipal and county clerks regarding the obstacles observers can pose to the orderly conduct of elections, it is necessary to codify standards to regulate the observers' conduct and that the attached rule governing observer conduct must be adopted prior to the fall elections to ensure the public peace and safety with respect to the administration of the fall elections.

Publication Date: September 26, 2008
Effective Date: September 26, 2008
Expiration Date: February 23, 2009

Health Services

(Formerly Health and Family Services)

Health, Chs. HFS 110—

EmR0825 – Rule adopted creating **Chapter HFS 119**, to require emergency medical technicians, first responders, and individuals who provide instruction to emergency medical technicians and first responders to complete training on the use of automated external defibrillators and to specify the content of the training, qualifications of providers, and frequency with which training is to be completed, and affecting small businesses.

Exemption From Finding of Emergency

The legislature by 2007 Act 104 provides the department with an exemption from a finding of emergency to adopt these emergency rules.

Publication Date: August 29, 2008
Effective Date: September 1, 2008
Expiration Date: January 29, 2009

Natural Resources

Fish, Game, etc., Chs. NR 1—

EmR0824 – Rule adopted revising ss. **NR 10.01 (1) (b), (g), (h), (u) and (v) and 10.06 (5)**, relating to the 2008 migratory game bird seasons and waterfowl hunting zones.

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

Publication Date: August 30, 2008
Amendment: September 26, 2008
Effective Date: August 30, 2008
Expiration Date: January 27, 2009
Hearing Date: October 27, 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
Hearing Dates: July 22 to August 5, 2008

Pharmacy Examining Board

EmR0815 – Rule adopted revising **Ch. Phar 13**, relating to the regulation of wholesale prescription drug distributors.

Finding of Emergency

The Board has made a finding of emergency. The Board finds that failure to have the proposed rules in effect on June 1, 2008, the effective date of the applicable provisions of 2007 Wisconsin Act 20, will create a danger to the public health, safety and welfare, by disrupting the wholesale distribution of prescription drugs in the state of Wisconsin.

Publication Date: May 29, 2008
Effective Date: June 1, 2008
Expiration Date: October 29, 2008
Hearing Date: July 23, 2008

Public Instruction (2)

1. **EmR0813** – A rule is adopted revising **Ch. PI 37**, relating to grants for national teacher certification and master educator licensure.

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 new provisions modifying the grants for the national teacher certification program under 2007 Wisconsin Act 20, the biennial budget bill, took effect October 27, 2007. In order to establish the new application criteria and procedures to award grants to eligible applicants in the 2007–08 school year, emergency rules must be in place as soon as possible.

Publication Date: May 17, 2008
Effective Date: May 17, 2008
Expiration Date: October 14, 2008
Hearing Date: July 23, 2008

2. **EmR0816** – A rule adopted revising **Ch. PI 30**, relating to state special education aid for certain pupil services personnel.

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 new provisions under 2007 Wisconsin Act 221 modifying the percentage of the salaries of licensed school nurses, licensed school social workers, licensed school psychologists, and licensed school counselors that are eligible for state aid reimbursement first applies to state aid distributed in the 2008–09 school year. In order to establish instructions this spring as to how school districts are to account for these pupil services staff on special education claim forms, rules must be in place as soon as possible.

Publication Date: May 30, 2008
Effective Date: May 30, 2008
Expiration Date: October 27, 2008
Hearing Date: July 14, 2008

Regulation and Licensing (4)

1. **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
Hearing Date: June 26, 2008
Extension Through: November 11, 2008

2. **EmR0819** – A rule adopted revising **s. RL 161.04**, relating to examinations for substance abuse professionals.

Finding of Emergency

The department has made a finding of emergency. The current rules require an applicant for a clinical substance abuse counselor credential to pass an oral examination. The company that produced that examination is not giving that examination after June 1, 2008. This emergency rule creates a time period for a transition to enable a category of applicants to get a clinical substance abuse counselor credential. Persons holding a clinical substance abuse counselor credential can apply for a supervisory credential. There is a strong need for more supervisors in this field because services can only be provided under supervision. This rule will enable more applicants to receive a supervisor credential and is therefore necessary to maintain the health, safety and welfare of the public.

Publication Date: June 18, 2008
Effective Date: June 18, 2008
Expiration Date: November 15, 2008

3. **EmR0827** – Rule adopted **creating s. RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section

227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008

Effective Date: September 10, 2008

Expiration Date: February 7, 2009

4. **EmR0828** – Rules adopted to amend s. **RL 181.01 (2) (c); and to create ss. RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008

Effective Date: September 10, 2008

Expiration Date: February 7, 2009

Revenue

EmR0820 – Rule adopted creating ss. **Tax 8.03 and 8.05**,

relating to the registration of wine collectors, establishing standards of eligibility for registration as a wine collector, specifying the form and manner of notice required prior to the sale of wine by a wine collector, and the creation and organization of small winery cooperative wholesalers.

Exemption From Finding of Emergency

The legislature by Section 50 of 2007 Wisconsin Act 85 provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: June 26, 2008

Effective Date: June 26, 2008

Expiration Date: July 1, 2010 or the date on which permanent rules take effect, whichever is sooner.

Transportation

EmR0818 – A rule adopted creating **Ch. Trans 263**, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

Exemption From Finding of Emergency

The Legislature, by 2007 Wisconsin Act 171, Section 6 (2), provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: July 1, 2008

Effective Date: July 1, 2008

Expiration Date: July 1, 2009 or the date on which permanent rules take effect, whichever is sooner.

Hearing Date: July 30, 2008

Scope Statements

Agriculture, Trade and Consumer Protection

Subject

Revises Chapter ATCP 149, relating to Wisconsin's Potato Marketing Order.

Objective of the Rule

The Wisconsin Potato Board, a semi–autonomous marketing board administers the potato marketing order subject to the terms of the marketing order and other applicable statutes and rules. Board members are elected by affected potato growers by district. The Board spends producer assessments, collected under the marketing order, for purposes specified in the marketing order. Under the current marketing order the assessment on potato producers used to fund market development, research and educational programs currently has a cap of \$0.06 per hundredweight of potatoes.

The rule may increase the cap on assessments to enable the Board to effectively promote the Wisconsin potato industry, and may alter the district representation to insure fair representation to affected potato growers.

Policy Analysis

DATCP may adopt marketing orders for agricultural commodities under ch. 96, Stats., and ch. ATCP 140, Wis. Adm. Code. DATCP adopts and amends marketing orders by rule. Marketing orders, and marketing order amendments, must be approved in a referendum of affected producers.

A semi–autonomous marketing board, elected by affected producers, administers each marketing order (subject to the terms of the marketing order and other applicable rules). The marketing board spends producer assessments, collected under the marketing order, for purposes specified in the marketing order.

DATCP has adopted a Potato Marketing Order under ch. ATCP 149, Wis. Adm. Code. The Wisconsin Potato Board, a producer–elected marketing board, administers the Potato Marketing Order. Under the marketing order, potato producers pay assessments on all potatoes produced and sold into commercial channels. Handlers, who purchase potatoes from producers, collect the assessments and pay them to the Wisconsin Potato Board. The Board uses the assessments to fund market development, research and educational programs related to potatoes.

The Wisconsin Potato Board has asked DATCP to amend the current Potato Marketing Order. In response to that request, DATCP proposes to consider the following amendments to the current marketing order:

- Increase of the cap assessments to enhance market development, research, and education related to potatoes.
- Changes to the election districts and number of members elected per district in order to assure fair representation for potato growers.

Policy Alternatives

If DATCP takes no action, the current Potato Marketing Order will remain in effect. The current election districts need

to be altered to insure fair representation for potato growers and the increase in the cap on assessments is needed to enable the Board to meet the goals of improving the quality and promote the marketing of potatoes and the potato industry.

Statutory Authority

Sections 96.05 through 96.08, Stats.

Entities Affected by the Rule

The entities directly affected are the potato growers who elect the members of the Wisconsin Potato Board and who pay assessments.

Comparison with Federal Regulations

There is a federal potato research and promotion plan administered by a National Potato Promotion Board that is appointed by the U.S. Secretary of Agriculture. The purpose of the federal program is to conduct promotion and research nationwide and to increase the export of potatoes. The authority for the federal program is 7 USC 2611–2627 and 7401. The federal program is supported by assessments of handlers and importers. The federal and the state marketing order program cooperate with and complement each other.

Estimate of Time Needed to Develop the Rule

DATCP estimates that it will use approximately 0.4 FTE staff to develop this rule. Staff time includes time involved in establishing a producer list, drafting rules, communicating with affected parties, holding public hearings, preparing documents and conducting a producer referendum. DATCP will use existing staff to develop this rule.

Commerce

Fee Schedule, Ch. Comm 2

Licenses, Certifications and Registrations, Ch. Comm 5

Subject

Revises Chapters Comm 2 and 5, relating to fees.

Objective of the Rule

One objective under this project is to establish a fee for the department review of continuing education courses which fulfill license renewal obligations for a variety of individual license renewals under chapter Comm 5.

Another objective is to analyze the existing fees charged under various program services to ensure equity within the program and among the various programs.

The objectives of this rule project may be incorporated into more than one rule package and may include revisions to other chapters affected by the proposal.

Policy Analysis

Section 101.19, Stats., requires the Department to fix and collect fees by rule which shall, as closely as possible, equal the cost of providing services such as plan examination, inspections, and permits to operate. The fees for these services provided by the Safety and Buildings Division are contained in chapter Comm 2. The fees involved in the issuance of licenses, certifications and registrations are contained in chapter Comm 5.

Currently, the department does not charge fees for the review of continuing education courses that fulfill license renewal obligations under chapter Comm 5. Costs associated with such reviews are currently covered by credential fees. The proposed concept of charging specific course review fee is considered to be a more equitable way of covering the costs associated with the course review. Not charging a review fee would maintain the status quo, resulting in a less equitable fee collection system.

The analysis of program service fees is an issue of equity, so that one regulated group is not subsidizing the department services provided to another group.

Statutory Authority

Chapters 101 and 145, Stats.

Entities Affected by the Rule

The rule will potentially affect a wide variety of individuals and entities that utilize the Safety and Building Division's services. The Division is involved in the oversight of commercial buildings, new one- and 2- family dwellings, blasting, amusement rides, fireworks manufacturers, boilers, electric wiring, plumbing, public swimming pools, private onsite wastewater treatment systems, passenger ropeways, elevators, escalators, mines, pits and quarries and manufactured homes. The people affected by the rule would include building owners, designers and contractors and owners of the various mechanical devices. Under chapter Comm 5 the division issues licenses, certifications and registrations to approximately 65 different types of trade practices typically related to building construction. For example, the Division issues credentials to blasters, electricians and inspectors. The rules would not affect credential fees established by the statutes, such as license fees for plumbers and automatic fire sprinkler system installers.

Comparison with Federal Regulations

An internet-based search of the *Code of Federal Regulations* (CFR) and the *Federal Register* did not find any federal regulations relating to the licensing and continuing education activities to be regulated under the rules.

Estimate of Time Needed to Develop the Rule

The department estimates approximately 200 hours will be needed to perform the review and develop any needed rule changes. This time includes forming and meeting with advisory councils, if necessary, drafting the rule changes and processing the changes through public hearings, legislative review, and adoption. The department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

Commerce

Fee Schedule, Ch. Comm 2

Licenses, Certifications and Registrations, Ch. Comm 5 *Flammable and Combustible Liquids, Ch. Comm 10*

Subject

Revises Chapters Comm 2, 5, and 10, relating to training of operators of underground storage tank systems.

Objective of the Rule

The proposed rules would primarily implement the operator-training requirements issued by the United States

Environmental Protection Agency in response to the federal Energy Policy Act of 2005.

Policy Analysis

The Department currently has rules for construction, maintenance and abandonment of storage tank systems for flammable, combustible or hazardous liquids – and has credential rules for several categories of contractors who perform those activities. However, those rules do not require any training for operators of these tank systems.

The proposed rules are expected to address (1) the operator-training requirements issued by the US EPA in response to the federal Energy Policy Act of 2005; (2) any corresponding changes that are needed in chapters Comm 2, 5 and 10 to effectively apply these requirements in Wisconsin; and (3) any other changes that may be needed in Comm 2, 5 or 10 as a follow-up to repealing and recreating Comm 10 in 2008.

The alternative of not promulgating these rules would conflict with a directive in Section 9010(b)(2) of the federal Solid Waste Disposal Act, as enacted in the federal Energy Policy Act of 2005, to develop these state-specific requirements; and would conflict with a US EPA mandate to develop these requirements by August 8, 2009.

Statutory Authority

Sections 101.09 (3) (a) and 227.11 (2) (a), Stats.

Entities Affected by the Rule

The proposed rules would affect all or nearly all entities that operate underground storage tank systems for flammable, combustible or hazardous liquids; and may affect entities that operate aboveground storage tank systems for these liquids.

Comparison with Federal Regulations

The operator-training requirements in Section 9010 of the federal Solid Waste Disposal Act, and the US EPA requirements issued in conjunction with Section 9010, establish three classes of operators; i.e., Class A operators have primary responsibility for on-site operation and maintenance of underground storage tank systems, Class B operators have daily on-site responsibility for the operation and maintenance of underground storage tank systems, and Class C operators have daily on-site responsibility for addressing emergencies presented by a spill or release from an underground storage tank system. The US EPA criteria further specify (1) which facilities are subject to the training requirements, (2) who is subject to the training requirements, (3) minimum components of the training programs for each class of operator, (4) a 3-year timeframe for completing the training of all the operators, (5) establishment of a state-level system for ensuring all operators are trained in accordance with the requirements, (6) methods for states to demonstrate compliance with the requirements, and (7) methods the US EPA will use to enforce state-level compliance with the requirements.

The proposed rules are expected to match or otherwise comply with these federal requirements.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rules is expected to range from 200 to 400 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5

Subject

Revises Chapter Comm 5, relating to registration of building contractors and subcontractors.

Objective of the Rule

The objective of this project is to require contractor registrations for businesses engaged in building construction. The contractor registrations would be for those building construction disciplines not currently required to have a license, certification or registration under chapter Comm 5.

The objectives of this rule project may be incorporated into more than one rule package and may include revisions to other chapters affected by the proposal.

Policy Analysis

Chapter Comm 5 establishes licensing, certification and registration programs for a variety of building trades, both for individuals and businesses. Currently under ch. Comm 5, with the exception of dwelling contractors, electrical contractors, elevator contractors, and HVAC contractors, the department does not have a registration program for businesses engaged in building construction as contractors and subcontractors.

Under the statutory authority of chapters 101 and 145, Stats., the department has the responsibility to protect public health, safety and welfare in the design and construction of public buildings, places of employment and one- and 2-family dwellings. The department has established building codes that establish minimum standards for the protection of public health, safety and welfare. Compliance with the building codes is a shared responsibility involving building owners, designers and contractors. The proposed registration of building contractors and subcontractors is to enable the department to better communicate with such contractors and facilitate code compliance.

Not registering building contractors and subcontractors would be a lost opportunity to facilitate improved communication and code compliance for the construction of buildings. A possible alternative would be to credential the individuals who actually perform the work.

Statutory Authority

Chapters 101 and 145, Stats.

Entities Affected by the Rule

It is anticipated that at least the following businesses and individuals would be affected by the rules: all contractors and subcontractors associated with building construction other than those already credentialed by the department. This would include general contractors, excavating contractors, fire alarm contractors, drywall contractors, insulation contractors, finish carpentry contractors, flooring contractors, framing carpentry contractors, glass and glazing contractors, equipment contractors, fire sprinkler contractors, masonry contractors, painting and wall covering contractors, plumbing contractors, poured concrete foundation and structure contractors, roofing contractors, siding contractors, structural steel and precast concrete contractors, and tile and terrazzo contractors.

Comparison with Federal Regulations

An internet-based search of the *Code of Federal Regulations* (CFR) and the *Federal Register* did not find any

federal regulations relating to the licensing and continuing education activities to be regulated under the rules.

Estimate of Time Needed to Develop the Rule

The department estimates approximately 200 hours will be needed to perform the review and develop any needed rule changes. This time includes forming and meeting with advisory councils, if necessary, drafting the rule changes and processing the changes through public hearings, legislative review, and adoption. The department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

Health Services

(Formerly Health and Family Services)

Health, Chs. HFS 110—

Subject

Revises Chapter HFS 131, relating to hospices.

Policy Analysis

The Department proposes to update ch. HFS 131 to align the rule with revised federal Medicare regulations, eliminate outdated regulations and to reflect current professional standards of practice. The Department also proposes to make minor, technical changes that will have little or no substantive effect on the entities regulated. The proposed changes are not expected to compromise the health, safety, and welfare of hospice patients.

On June 5, 2008 the Centers for Medicare Medicaid Services (CMS) published revised Medicare Hospice Conditions of Participation. The revised regulations become effective on December 2, 2008. Through this rulemaking initiative, the Department proposes to eliminate the inconsistencies between ch. HFS 131 and the federal regulations to allow for more efficient and effective regulation of hospices. The Department anticipates that the proposed modifications will include revisions to s. HFS 131.32 (3) concerning universal precautions, s. HFS 131.42 (3) concerning the plan of care and s. HFS 131.43 (2) concerning the core team.

Chapter HFS 131 has not been substantially revised since initially promulgated in 1992. The Department proposes to eliminate outdated regulations and adopt current professional standards of practice. The Department anticipates that the proposed revisions will include the right of patients to receive effective pain management and symptom control and current infection control measures as recommended by the U.S. Centers for Disease Control and Prevention.

Statutory Authority

The Department's authority to promulgate rules is under ss. 50.95 (1), (2), (4), (5), and (6) and 227.11 (2) (a), Stats.

Entities Affected by the Rule

Entities affected by the proposed rule include hospices that are state licensed only and hospices that are both state licensed and certified for Medicare.

Comparison with Federal Regulations

Title 42 CFR 418 contains the Federal Medicare Hospice Conditions of Participation. These regulations establish conditions and standards for the operation of hospices that primarily provide palliative and supportive care to an individual with terminal illness where he or she lives and if necessary arranges for or provides short-term inpatient care and treatment or respite care. State regulations are

comparable and the intent of these regulations is to foster safe and adequate care and treatment of patients by hospice agencies.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take 1,000 hours to draft the rulemaking order. In drafting the rule, the Department will seek the participation of Hospice Organization and Palliative Experts (HOPE) of Wisconsin, hospices and hospice consumers.

Contact Information

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608–264–9896

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board and Psychology Examining Board

Subject

Revises section MPSW 1.11, regarding psychometric testing.

Objective of the Rule

The Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, as well as the Psychology Examining Board, propose to amend s. MPSW 1.11 regarding psychometric testing. Currently, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board rules define psychometric testing and provide guidelines as to how licensees of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (e.g., licensed marriage and family therapists, licensed professional counselors, and licensed clinical social workers) may be trained for and have access to psychometric testing instruments.

The goal is to amend the existing rule in order to clarify the definition of psychometric testing, to better determine who may have access to psychometric tests and other testing instruments, and to determine who may supervise the individuals who administer these tests.

Policy Analysis

Psychometric testing is authorized under s. 457.033, Stats. Under that section, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board are required to jointly promulgate rules that specify the different levels of psychometric testing that an individual who is certified or licensed under ch. 457, Stats., is qualified to perform. The statute also directs that the resulting administrative rules are to be consistent with guidelines of the American Psychological Association or other nationally recognized guidelines. Both examining boards have agreed to initiate the rule-making process.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 457.033, Stats.

Entities Affected by the Rule

Licensed marriage and family therapists, licensed professional counselors, and licensed clinical social workers.

Comparison with Federal Regulations

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

Estimate of Time Needed to Develop the Rule

160 hours.

Transportation

Subject

Revises Chapter Trans 276, relating to highways on which long combination vehicles may operate.

Objective of the Rule

A group of trucking companies led by LCK Transport LLC of Rosholt, Wisconsin, have petitioned the Department to consider amendments to ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding two highway segments to the network. The actual segments being proposed are:

STH 66 from the west side of Rosholt to CTH A east of Rosholt; and

CTH A in Portage County from STH 66 near Rosholt to USH 10 in Amherst

Policy Analysis

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to make changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a request from LCK Transport LLC, of Rosholt, WI, to add these highway segments. Seventeen other individuals and businesses have signed the petition.

Current law limits straight trucks on STH 66 through Rosholt and on Portage County Highway A to 40 feet in length and combination vehicles to 65 feet in length. Double bottom trucks are currently not permitted on these stretches of highway.

Designating these particular highways as “long truck routes,” would lift all limits on overall truck length and permit double-bottom trucks to be operated on these highway segments, provided that the trailer on a combination vehicle does not exceed 53 feet in length and no trailer on a double bottom exceeds 28 feet in length. This proposed rule change would not permit overweight loads.

Increasing overall vehicle length raises two primary safety concerns on any highway. First, whether the physical geometrics of the highway will permit longer vehicles to operate upon it. That is, “will the vehicles physically fit on the highway?” Sharp corners, for example, can make it impossible for a long vehicle to navigate a route while remaining within its lane of travel. Second, longer vehicles are more difficult for traffic to pass. This is especially true on 2-lane roads.

Statutory Authority

Section 348.07 (4), Stats.

Entities Affected by the Rule

The rule will affect the requester of the route to be designated, other operators of commercial motor vehicles, and residents and businesses along STH 66 in Rosholt and along Portage County CTH A. Permitting long trucks on the route will necessarily affect all persons operating vehicles on or using those highways.

Comparison with Federal Regulations

In the Surface Transportation Assistance Act of 1982 (STAA), the federal government acted under the Commerce

clause of the United States Constitution to provide uniform standards on vehicle length applicable in all states. The length provisions of STAA apply to truck tractor–semitrailer combinations and to truck tractor–semitrailer–trailer combinations. (See Jan. 6, 1983, Public Law 97–424, § 411) The uniform standards provide that:

- No state shall impose a limit of less than 48 feet on a semitrailer operating in a truck tractor–semitrailer combination.
- No state shall impose a length limit of less than 28 feet on any semitrailer or trailer operating in a truck tractor–semitrailer–trailer combination.
- No state may limit the length of truck tractors.
- No state shall impose an overall length limitation on commercial vehicles operating in truck tractor–semitrailer or truck tractor–semitrailer–trailer combinations.
- No state shall prohibit operation of truck tractor–semitrailer–trailer combinations.

The State of Wisconsin complied with the federal requirements outlined above by enacting 1983 Wisconsin Act 78 which amended § 348.07(2), Stats., and § 348.08(1), Stats. This act created §§ 348.07(2)(f), (fm), (gm) and 348.08(1)(e) to implement the federal length requirements. In 1986 the legislature created § 348.07(2)(gr), Stats., to add 53 foot semitrailers as part of a two vehicle combination to the types of vehicles that may operate along with STAA authorized vehicles. (See 1985 Wisconsin Act 165)

The vehicles authorized by the STAA may operate on the national system of interstate and defense highways and on those federal aid primary highways designated by regulation of the secretary of the United States Department of Transportation. In 1984 the USDOT adopted 23 CFR Part 658 which in Appendix A lists the highways in each state upon which STAA authorized vehicles may operate. Collectively these highways are known as the National Network. In 1983 Wisconsin Act 78, the legislature enacted § 348.07(4), Stats., which directs the Wisconsin Department of Transportation to adopt a rule designating the highways in Wisconsin on which STAA authorized vehicles may be operated consistent with federal regulations.

The Department of Transportation first adopted ch. Trans 276 of the Wisconsin Administrative Code in December of 1984. The rule is consistent with 23 CFR Part 658 in that the Wisconsin rule designates all of the highways in Wisconsin that are listed in 23 CFR Part 658 as part of the National Network for STAA authorized vehicles. The federal regulation does not prohibit states from allowing operation of STAA authorized vehicles on additional state highways. The rule making authority granted to the Wisconsin Department of Transportation in § 348.07(4), Stats., allows the DOT to add routes in Wisconsin consistent with public safety. The rule making process also provides a mechanism to review requests from businesses and shipping firms for access to the designated highway system for points of origin and delivery beyond 15 miles from a designated route. A process to review and respond to requests for reasonable access is required by 23 CFR Part 658.

Estimate of Time Needed to Develop the Rule

It is estimated that state employees will spend 40 hours on the rule–making process, including research, drafting and conducting a public hearing.

Transportation

Subject

Amends Chapters Trans 325, 326, and 327, relating to motor carrier safety and hazardous material transportation safety.

Objective of the Rule

The objective is to bring the rules into conformance with changes to the Federal Motor Carrier Safety Regulations (FMCSR’S) and the Hazardous Material Regulations (HMR’S) which are currently in effect at the federal level. Amendment of these rules will assure State Patrol inspectors and troopers are enforcing the most current FMCSR’S for interstate carriers and HMR’S for both interstate and intrastate carriers of hazardous material.

Trans 325 (Motor Carrier Safety Regulations) – interstate. Amend the rule to include all changes currently in effect at the federal level. Changes have been made to the Federal Motor Carrier Safety Regulations 49 CFR, Parts 390 through 397 regulating interstate motor carrier operations. In addition it is necessary to adopt 49 CFR Part 385 Subpart C, *Certification of Safety Auditors, Safety Investigators, and Safety Inspectors*, and 49 CFR Part 387 as it pertains to the financial responsibility requirements applicable to commercial motor vehicles subject to the provisions of 49 CFR 392.9a. Amendment to this rule will bring state regulations into compliance with current federal interstate regulations.

Trans 326 (Motor Carrier Safety Requirements for Transportation of Hazardous Materials) – for interstate and intrastate operations. Amend the rule to include all changes that have been made to federal Hazardous Material Regulations 49 CFR, Parts 107, 171, 172, 173, 177, 178, and 180. In addition it is necessary to adopt 49 CFR Part 385 Subpart E, *Hazardous Material Safety Permits*. Amendment to this rule will bring state regulations, interstate and intrastate, into compliance with current federal regulations.

Trans 327 The rule making will also amend ch. Trans 327 relating to intrastate motor carrier safety regulations to bring it into compliance with the most recent changes to the Federal Motor Carrier Safety Regulations which are currently in effect. In addition, it is necessary to adopt 49 CFR Part 385 Subpart C, *Certification of Safety Auditors, Safety Investigators, and Safety Inspectors*. Amendment of this rule will assure State Patrol inspectors and troopers are enforcing the most current Federal Motor Carrier Safety Regulations applicable to intrastate carriers.

These proposed rule changes will bring the Department into compliance with the Federal Motor Carrier Safety Regulations and the federal Hazardous Material Regulations as necessary to qualify for continued Motor Carrier Safety Assistance Program (MCSAP) funding.

Policy Analysis

Trans 325 The Department is updating ch. Trans 325 to keep current with the most recent changes and revisions to the Federal Motor Carrier Safety Regulations. The revisions allow state inspectors and troopers to enforce the most current safety regulations already in effect for interstate motor carriers. The rule will continue to reference the use of the most recent North American uniform out–of–service criteria for placing vehicles and drivers out–of–service.

Trans 326 The Department is updating ch. Trans 326 to keep current with the most recent changes and updates to the federal Hazardous Material Regulations. The revisions will

allow state inspectors and troopers to enforce the most current Hazardous Material Regulations already in effect for interstate and intrastate carriers.

Trans 327 The Department is updating ch. Trans 327 to keep current with the most recent changes to the Federal Motor Carrier Safety Regulations, including 49 CFR Parts 40, 390 to 393, and 395 to 397.

Statutory Authority

Trans 325 – Section 110.075 and Chapter 194, Stats.

Trans 326 – Sections 110.07, 194.38, 194.43 and 346.45 (4), Stats.

Trans 327 – Sections 110.07, 110.075, 194.38 and 194.43, Stats.

Entities Affected by the Rule

Interstate and intrastate motor carriers and law enforcement will be affected by this rule.

Comparison with Federal Regulations

Trans 325 Trans 325 (Interstate Motor Carrier Safety

regulations) adopts Federal regulations 49 CFR Parts 390 to 393 and 395 to 397. In addition to the currently adopted regulations, it is necessary to adopt 49 CFR Part 385 Subpart C (Certification of Safety Auditors, Safety Investigators and Safety Inspectors).

Trans 326 Trans 326 (Motor Carrier Regulations for the Transportation of Hazardous Materials) adopts 49 CFR Parts 107, 171, 172, 173, 177, 178, and 180. In addition to the current adopted regulations, it is necessary to adopt 49 CFR Part 385 Subpart E (Hazardous Materials Safety Permits).

Trans 327 The Department updates Trans 327 to keep current with the most recent changes to the Federal Motor Carrier Safety Regulations, 49 CFR Parts 40, 390 to 393, and 395 to 397. In addition to the currently adopted regulations, it is necessary to adopt 49 CFR Part 385 Subpart C (Certification of Safety Auditors, Safety Investigators and Safety Inspectors).

Estimate of Time Needed to Develop the Rule

100 hours

Submittal of Rules to Legislative Council Clearinghouse

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

Chiropractic Examining Board CR 08–093

On September 29, 2008, the Department of Regulation and Licensing submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters Chir 1, 2, 3, and 5, relating to continuing education and requirements for proficiency in the use of automated external defibrillators.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 20, 2008.

Contact Information

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Commerce

Licenses, Certifications and Registrations, Ch. Comm 5 CR 08–092

On September 29, 2008, the Department of Commerce submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters Comm 5, 40, and 65, relating to retail liquefied gas suppliers.

Agency Procedure for Promulgation

A public hearing is scheduled for November 4, 2008. The Department’s Division of Safety and Buildings is responsible for promulgation of the rules.

Contact Information

James Quast, Program Manager
608–266–9292
jim.quast@wisconsin.gov

Regulation and Licensing CR 08–094

On September 29, 2008, the Department of Regulation and Licensing submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter RL 161, relating to examinations for substance abuse professionals.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 11, 2008.

Contact Information

Pamela Haack, Paralegal
Office of Legal Counsel
608–266–0495
Pamela.haack@drl.state.wi.us

Rule–Making Notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

(Reprinted from September 30 Register)

CR 08–090

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on rules revising Chapter ATCP 30, relating to expanding and joining two current atrazine prohibition areas near Poynette in Columbia County.

Hearing Information

DATCP will hold the public hearing at the time and location shown below.

<u>Date and Time</u>	<u>Location</u>
October 23, 2008	MacKenzie Environmental
Thursday	Center
3:00 p.m. to 5:00 p.m. and	Badger Den Conference Rm.
6:00 p.m. to 8:00 p.m.	W7303 Co. Hwy CS
	Poynette, WI 53955

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by October 16, by writing to Claire Fried, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, Claire.Fried@wisconsin.gov, telephone (608) 224–4523. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

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

In order to protect Wisconsin groundwater, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) administers rules that limit atrazine herbicide application rates throughout the state, and prohibit atrazine applications in areas where groundwater contamination levels attain or exceed state enforcement standards adopted by the Department of Natural Resources. Based on new groundwater test data, this rule will expand and join two current atrazine prohibition areas in Columbia County.

Statutes interpreted

Sections 94.69, 160.19 (2), and 160.21 (1), Stats.

Statutory authority

Sections 93.07 (1), 94.69 (1), 160.19 (2), and 160.21 (1), Stats.

Explanation of statutory authority

DATCP has broad authority, under s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. DATCP has authority to adopt pesticide rules under s. 94.69(1), Stats. Under ss. 160.19 (2) and 160.21 (1), Stats., DATCP must regulate pesticide use, as necessary, to prevent groundwater contamination and restore groundwater quality.

Related rules or statutes

Under the state groundwater law, ch. 160, Stats., DATCP must regulate pesticide use as necessary to prevent groundwater contamination and restore groundwater quality.

DATCP has adopted general rules for its groundwater protection program under ch. ATCP 31, Wis. Adm. Code. DNR has adopted groundwater enforcement standards and preventive action limits for atrazine and its metabolites under NR 140, Wis. Adm. Code.

This rule is consistent with the state groundwater law (ch. 160, Stats.) and DATCP’s general groundwater protection rules (ATCP 31), and is designed to attain compliance with the groundwater enforcement standards and preventive action limits specified by DNR rules (NR 140).

Background

Atrazine is a widely used agricultural herbicide that has been found in groundwater throughout the state. Current DATCP rules under ch. ATCP 30, Wis. Adm. Code, limit atrazine application rates throughout the state to ½ the current federal label rate. The current rules also *prohibit* the use of atrazine where atrazine contamination of groundwater has attained or exceeded the state groundwater enforcement standard under ch. NR 140, Wis. Adm. Code. Current rules prohibit atrazine use in 102 designated areas, including major prohibition areas in the lower Wisconsin River Valley and much of Dane and Columbia counties.

Rule content

Based on new groundwater sampling data, this rule expands and joins two current atrazine prohibition areas in Columbia County. The expansion will increase the total statewide acreage of atrazine prohibition areas by approximately 1,830 acres. By joining two prohibition areas, this rule will reduce the total number of prohibition areas from 102 to 101. This rule includes maps describing the revised prohibition areas.

Within every prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface that complies with s. ATCP 29.45, Wis. Adm. Code.

Comparison with federal regulations

Pesticides and pesticide labels must be registered with the federal Environmental Protection Agency (“EPA”). Persons may not use pesticides in a manner inconsistent with the federal label.

The maximum atrazine application rate in Wisconsin is ½ of the maximum federal rate. However, the current federally–registered atrazine label suggests that atrazine should not be used on permeable soils with groundwater near the soil surface. Wisconsin has clear, definite restrictions on atrazine use, based on actual findings of groundwater contamination in this state.

EPA is proposing federal rules that would require states to have pesticide management plans for pesticides that have the potential to contaminate groundwater. Wisconsin’s current regulatory scheme for atrazine pesticides would likely comply with the proposed federal rules.

Comparison with rules in adjacent states

Wisconsin atrazine regulations are stronger than those in adjacent states:

- Iowa restricts atrazine application rates to 1/2 the federal label rate in 23 counties (7 with county–wide restrictions and 16 with restrictions in some townships).

- Minnesota has a program of voluntary use limitations when surface water or groundwater contamination exceeds a level of concern. This program suggests pesticide use restrictions or management practices to reduce surface water or groundwater contamination. To date, this program has not been implemented anywhere in Minnesota.
- Illinois and Michigan have no atrazine regulations.

Data and analytical methodologies

This rule is based on groundwater sample results for atrazine and atrazine metabolites obtained from the affected areas during the past year. Groundwater samples contained atrazine contamination in excess of 3.0 ug/L (the state enforcement standard established by DNR groundwater rules under ch. NR 140, Wis. Adm. Code).

Preliminary contamination findings were based on groundwater samples analyzed by the University of Wisconsin – Stevens Point. DATCP confirmed the existence of groundwater contamination, in excess of the state enforcement standard, based on DATCP analysis of groundwater samples collected by DATCP. DATCP collected and analyzed the samples using official collection and analytical methods.

Small Business Impact

This rule will affect four or five farmers, in the expanded prohibition areas, who currently use atrazine to control weeds in corn. Those farmers, who are “small businesses,” will no longer be able to use atrazine. However, other effective weed control products are available, so the rule will not have a significant impact on the affected farmers. This rule may also have a slight impact on distributors and applicators of atrazine herbicides, crop consultants and equipment dealers, but the impact will not be significant.

This rule will not have a significant adverse impact on small business, and is not subject to the delayed small business effective date provided in s. 227.22 (2) (e), Stats.

Fiscal Estimate

Administration and enforcement of this rule will involve some new costs for DATCP. Staff time will be needed to monitor compliance (0.1 FTE, cost approximately \$7,800). Compliance monitoring will be coordinated with current compliance monitoring activities. Soil sampling and testing may be used to monitor compliance, and may require an estimated \$1,000 in analytical services.

Total costs are estimated at \$8,800. DATCP expects to absorb these costs within its current budget. There will be no additional costs to any other state agencies or local governments.

Submission of Written Comments

DATCP invites the public to attend the hearing and comment on the rules. Following the hearing, the hearing record will remain open until November 7, 2008 for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, by email to Rick.Graham@wisconsin.gov or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

To provide comments or concerns relating to small business, you may also contact DATCP’s small business regulatory coordinator Keeley Moll at the address below, or by emailing to Keeley.Moll@wisconsin.gov or by telephone at (608) 224–5039.

Copies of Proposed Rule

You may obtain free copies of the proposed rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain copies by calling (608) 224–4502 or emailing Rick.Graham@wisconsin.gov. Copies will also be available at the hearing. To view the proposed rule online, go to: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

Agency Contact Person

Questions and comments related to this rule may be directed to:

Rick Graham
Dept. of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708–8911
Telephone (608) 224–4502
E–Mail: rick.graham@wisconsin.gov

Notice of Hearing Commerce

Licenses, Certifications and Registrations, Ch. Comm 5 CR 08–092

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (2) and (15) and 101.16, Stats., the Department of Commerce will hold a public hearing on proposed rules under Chapter Comm 5, relating to retail liquefied gas suppliers and affecting small business.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
November 4, 2008 1:00 p.m.	Conference Room 3B Thompson Commerce Center 201 W. Washington Avenue Madison

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 contact through Wisconsin Relay 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.

Analysis Prepared by Department of Commerce

Statutes interpreted

Section 101.16, Stats., as affected by 2007 Wisconsin Act 203.

Statutory authority

Sections 101.02 (1) and (15), and 101.16 (2), Stats., as affected by 2007 Wisconsin Act 203.

Explanation of agency authority

Under the statutes cited, the Department of Commerce protects public health, safety, and welfare by promulgating comprehensive requirements for design, construction, use and maintenance of public buildings and places of employment. Under section 101.16, Stats., the Department has the responsibility for developing rules specifically for minimum safety standards for the design, construction, installation, operation, inspection, repair and maintenance of liquefied petroleum gas systems.

Related statute or rule

Chapter Comm 40, Gas Systems
Chapter Comm 65, Fuel Gas Appliances

Summary of proposed rules

The proposed rules establish administrative procedures for licensing of liquefied gas suppliers as mandated by 2007 Wisconsin Act 203.

Comparison with federal regulations

An internet search on U.S. federal regulations and U.S. federal register yielded no results regarding the licensing of liquefied gas suppliers.

Comparison with rules in adjacent states

An Internet–based search of liquefied petroleum gas suppliers in the states of Illinois, Iowa, Michigan and Minnesota found that none of the states have specific rules or programs regarding these types of grants.

Summary of factual data and analytical methodologies

The proposed rules were developed by reviewing the provisions under 2007 Wisconsin Act 203 in conjunction with the current licensing rules relating to businesses under ch. Comm 5.

Small Business Impact**Analysis and supporting documents used to determine effect on small business**

The proposed rules implement the licensing mandates imposed by 2007 Wisconsin Act 203. The primary businesses affected by these licensing mandates are suppliers who fill propane gas cylinders. This would include bulk gas suppliers, cooperatives, hardware stores and camp grounds. The department does not believe that the proposed rules will increase the effect on small businesses over that imposed by the Act.

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

Initial regulatory flexibility analysis**Types of small businesses that will be affected by the rules**

The proposed rules implement the licensing mandates imposed by 2007 Wisconsin Act 203. The primary businesses affected by these licensing mandates are suppliers who fill propane gas cylinders. This would include bulk gas suppliers, cooperatives, hardware stores and camp grounds.

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

The Act under s. 101.16 (3r), Stats., requires the licensed gas suppliers to maintain proof of financial responsibility. The financial amounts vary with the type of tanks to be filled.

Types of professional skills necessary for compliance with the rules.

No other types of professional skills are necessary for compliance with the rules

Rules have a significant economic impact on small businesses?

No.

Environmental Impact

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 proposed rules implement the licensing mandates imposed by 2007 Wisconsin Act 203 relating to businesses which supply/fill liquid petroleum gas cylinders. The primary businesses affected by these licensing mandates would include bulk gas suppliers, cooperatives, hardware stores and camp grounds. The department estimates there would be 600 suppliers who would be required to obtain licenses. The department proposes to charge \$60 for a license and \$40 for a restricted license which would be limited to filling only DOT cylinders. The department also anticipates that a majority of the suppliers would obtain the restricted licenses. The department estimates that it would realize approximately \$26,000 in revenue for the two–year licenses or \$13,000 annually. The department anticipates that workload associated with this licensing can be absorbed within current resources and staff levels.

State government fiscal impact

Increase existing revenues.

Increase costs – may be possible to absorb within agency's budget.

Local government fiscal impact

None

Fund sources affected

PRO

Long–range fiscal implications

None are anticipated

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 November 14, 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 James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at jim.quast@wisconsin.gov.

Copies of Proposed Rules

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 contact through Wisconsin Relay. Copies will also be available at the public hearing.

Agency Contact

James Quast, Program Manager, telephone (608) 266–9292 or Email at jim.quast@wisconsin.gov.

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.

Notice of Hearing

Commerce

*Financial Resources for Businesses and Communities,
Chs. Comm 104—
Housing Assistance, Chs. Comm 150—*

EmR0831

NOTICE IS HEREBY GIVEN that pursuant to section 560.032 of the Statutes, the Department of Commerce will hold a public hearing on emergency rules under Chapters Comm 113 and 154, relating to allocation of volume cap on tax–exempt private activity bonds.

Hearing Information

The public hearing will be held as follows:

Date and Time:	Location:
October 27, 2008 Monday at 10:00 a.m.	Thompson Commerce Center Third Floor, Room 3B 201 West Washington Avenue Madison, Wisconsin

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 or contact through Relay 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.

Analysis Prepared by Department of Commerce

Statutes interpreted

Section 560.032.

Statutory authority

Section 560.032, Stats.

Explanation of agency authority

Section 560.032 of the Statutes requires the Department to promulgate rules for establishing and administering a system, under 26 USC 146, for allocating the federal volume cap on tax–exempt private activity bonds, as defined under 26 USC 141 (a), among various Wisconsin issuers, including the Wisconsin Housing and Economic Development Authority (WHEDA).

Related statute or rule

The Department has statutes and rules for several programs associated with housing assistance and community development – such as chapter Comm 154, Small Cities Community Development Block Grants for Housing; and chapter Comm 108, Community Development Block Grant Program – but only chapter Comm 113 contains rules relating to allocating a volume cap on tax–exempt private activity bonds for housing.

Plain language analysis

The rules in this order allocate to WHEDA for calendar year 2008 the one–time additional \$175.4 million in tax–exempt bonding authority that has been awarded to Wisconsin for single–family and multifamily housing activities, under section 3021 of the federal Housing and Economic Recovery Act of 2008.

Comparison with federal regulations

Section 3021 of the federal Housing and Economic Recovery Act of 2008 amends subsection (d) of section 146 of the Internal Revenue Code to create a special one–time increase in the allocation of volume cap for calendar year 2008, to be used for the issuance of single–family housing bonds and multifamily bonds. Notice 2008–79 from the Internal Revenue Service specifies the amount of the increase that is allocated to each State.

Comparison with rules in adjacent states

Michigan. According to staff in the Michigan Department of Revenue, Michigan has statutes that address allocation of their volume cap for tax–exempt private activity bonds, and they are administering the allocation directly under those statutes rather than under corresponding rules. Consequently, no rulemaking is anticipated for administering their one–time, 2008 volume cap increase of \$315.4 million.

Minnesota. According to staff in the Minnesota Department of Finance and Employee Relations, Minnesota has statutes that address allocation of their volume cap for tax–exempt private activity bonds, and they are administering the allocation directly under those statutes rather than under corresponding rules. Consequently, no rulemaking is anticipated for administering their one–time, 2008 volume cap increase of \$162.7 million.

Iowa. According to staff in the Iowa Finance Authority, Iowa has statutes and corresponding rules that address allocation of their volume cap for tax–exempt private activity bonds, and they are administering the allocation under those statutes and rules. However, no rulemaking is anticipated for administering their one–time, 2008 volume cap increase of \$96.6 million.

Illinois. Section 30 ILCA 345 of the Illinois statutes designates the Governor’s Office as the entity charged with allocating their volume cap for tax–exempt private activity bonds, and specifies that the guidelines and procedures which are issued by the Governor’s Office govern and control the administration of the allocation process in accordance with section 30 ILCA 345. The one–time, 2008 volume cap increase for Illinois is \$402.4 million.

Summary of factual data and analytical methodologies

The data and methodology for developing these rules were derived from and consisted of reviewing the criteria in section 3021 of the federal Housing and Economic Recovery Act of 2008; a summary of the Act, from the National Council of State Housing Agencies; and Notice 2008–79 from the Internal Revenue Service.

Small Business Impact

Analysis and supporting documents used to determine effect on small business

The primary documents that were used to determine the effect of the rules on small business were the federal Housing and Economic Recovery Act of 2008; a summary of the Act, from the National Council of State Housing Agencies; and Notice 2008–79 from the Internal Revenue Service.

No economic impact report was prepared.

Summary

The rules are expected to result in only beneficial effects on small business because the rules only address a temporary increase in WHEDA bonding authority for single–family and multifamily housing activities.

Initial Regulatory Flexibility Analysis*Types of small businesses that will be affected by the rules*

Businesses that receive payments from funds which become available because of the rules.

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

No new reporting, bookkeeping or other procedures are necessary for compliance with the rules.

Types of professional skills necessary for compliance with the rules

No new professional skills are necessary for compliance with the rules.

Rules have a significant economic impact on small businesses

No

Environmental Impact

In accordance with chapter Comm 1, the 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 rules are not expected to have a significant fiscal effect on the Department because they simply allocate new tax–exempt bonding authority of \$175.4 million to the Wisconsin Housing and Economic Development Authority for calendar year 2008.

The rules are likewise not expected to impose any significant costs on the private sector.

State government fiscal impact

None

Local government fiscal impact

None

Long–range fiscal implications

None known

Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the emergency 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 November 1, 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 Emergency Rules

The emergency rules and an analysis of the rules are available on the Internet by entering “Comm 113” in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Sam Rockweiler at the

Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at srockweiler@commerce.state.wi.us, or at telephone (608) 266–0797. Copies will also be available at the public hearing.

Agency Contact Person

Tarna Gahan–Hunter, Wisconsin Department of Commerce, Bureau of Policy and Budget, P.O. Box 7970, Madison, WI, 53707–7970; telephone (608) 267–9382; e–mail tarna.gahanhunter@wisconsin.gov.

Any inquiries for the small business regulatory coordinator for the Department of Commerce can be directed to Sam Rockweiler, as listed above.

Notice of Hearing**Financial Institutions – Securities****EmR0829 and Permanent Rule**

NOTICE IS HEREBY GIVEN that the Division of Securities of the Department of Financial Institutions will hold a public hearing to consider the adoption of emergency and permanent rules revising Chapters DFI–Sec 4, 5 and 10, relating to making it a dishonest or unethical practice for securities licensees to make use of misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

Hearing Information

The public hearing will be held:

<u>Date and Time</u>	<u>Location</u>
November 18, 2008 Tuesday at 10:00 a.m.	Hearing Room 411 South, State Capitol Madison

Analysis Prepared by the Department of Financial Institutions – Division of Securities**Statutes interpreted**

Under current Chapter 551: Section 551.34 (1) (g), Stats.

Under 2007 Wis. Act 196: Section 551.412 (4) (m), Stats.

Statutory authority

Under current Chapter 551: Sections 551.63 (1) and (2), Stats.

Under 2007 Wis. Act 196: Sections 551.605 (1) (b), (2) and 551.608 (1), (2) and (3) (i), Stats.

Plain language analysis

The rule–making procedures under Chapter 227 of the Wisconsin Statutes are being implemented for the purpose of adopting permanent rules to be in effect upon expiration of emergency rules issued by the Division on September 11, 2008 to protect seniors in Wisconsin from being misled through the use by securities licensees of designations and credentials that imply or represent that a person has special expertise, certification, or training in financial planning for seniors, but where such designations and/or credentials are either non–existent or do not involve significant education, testing, training or experience, and in reality are marketing ploys.

The Division’s rulemaking is based on a “Model Rule On the Use of Senior–Specific Certifications and Professional Designations,” developed by the North American Securities Administrators Association, Inc. (“NASAA Model Rule”), and adopted by the NASAA membership, including Wisconsin, with an effective date of April 1, 2008. The Wisconsin rule–making involves amending the list of

“dishonest or unethical business practice” provisions applicable to broker–dealers, agents, investment advisers and investment adviser representatives to provide that the misleading use by licensees of senior designations or certifications — as particularized in the rules — can be a basis for denial, censure, suspension or revocation of a license.

Because the “senior designation/certification problem” is current and ongoing, and represents a serious source of potential harm for seniors in Wisconsin, the Division used the emergency rule–making procedures to adopt the NASAA Model Rule to be able to have such rule in place immediately to protect Wisconsin seniors, rather than using the regular, permanent rule–making process which requires a 5–6 month process to complete.

Additional justification for this rule–making action relates to the discussion in the following paragraphs which describes the need for acting on a uniform, Model NASAA Rule basis, and the involvement of U.S. Senator Herb Kohl who has expressed interest in this problem and has introduced federal legislation to promote action by individual states to adopt the uniform, NASAA Model Rule.

The background of the discovery by NASAA of the current and ongoing “senior designation” problem and development of the NASAA Model Rule began in 2004 when licensing examiners for the Securities Divisions in a number of states across the U.S., including Wisconsin, noted while conducting office examinations of securities professionals that some securities agents and advisers were using sets of various, new acronyms in their marketing materials. Such acronyms relate to numerous different certifications or designations to make it appear that the salesperson has special qualifications or specialized education in addressing the needs of senior citizens or retirees in areas of finance, financial planning, estate planning, or investing, and thus are used by those licensees to provide an edge in attracting seniors who are nearing retirement, or are in retirement, to become clients/customers.

Summary of the rule. The NASAA Model Rule being adopted in Wisconsin covers a broad array of practices. It prohibits licensees from using any non–existent or self–conferred certification. Also prohibited would be any designation that “indicates or implies a level of occupational qualification obtained through education, training, or experience” that the person doesn’t actually have. Furthermore, the proposed rule would disallow designations obtained from organizations that are “primarily engaged in the business of instruction in sales and/or marketing.” Additionally, reasonable standards for competency would be required, along with monitoring designees and minimum continuing–education standards. Also included is a listing of nationally recognized accrediting agencies whose accreditation of an organization would not be disqualified under the Model Rule.

Comparison with federal regulations

There currently are no federal statutes or regulations dealing with this specific issue. However, shortly after NASAA detected the misleading senior certifications/designations problem that was occurring on a multi–state basis, Senator Herb Kohl of Wisconsin, who chaired (and continues to chair) the US Senate Committee on Aging, called a series of hearings in 2006 on various aspects concerning older investors, one of the results of which was Senator Kohl’s interest in creating federal legislation to limit the use of misleading certification/designations. However, based upon NASAA’s intent to create a model rule for its members to adopt on a uniform basis throughout the states, the

Senator instead drafted legislation that recognizes the need for developing a uniform, model rule, and which rewards individual states for adopting such a model rule. The legislation, S. 2794, the Senior Investor Protection Act of 2008, would establish a grant program under which a State may receive a grant of up to \$100,000 per year if it has “adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice, which ... conform to the minimum requirements of the NASAA Model Rule.”

Comparison with rules in adjacent states

Currently, no states adjacent to Wisconsin have adopted the NASAA Model Rule. However, the need for uniform treatment in dealing with the problem was highlighted by a few states who undertook separate rule–making actions using divergent approaches in 2007 (before the NASAA Model Rule was completed), thus creating difficulties for large securities firms with brokers and advisers across the country trying to comply with non–uniform approaches to the problem. Those firms, justifiably, have asked for a single, uniform rule that would make it possible to design systems to facilitate compliance throughout all state jurisdictions. Several non–adjacent states have already adopted the NASAA Model Rule, including Virginia, Washington, New Hampshire, Alabama and California.

Small Business Impact

Initial regulatory flexibility analysis

Types of small businesses that could be affected by the proposed rules

Broker–dealer and investment adviser registrants under the new Wisconsin Uniform Securities Law (2007 Wisconsin Act 196) with fewer than 25 full–time employees who meet the other criteria of sec. 227.114 (1) (a), Wis. Stats. However, the proposed Prohibited Conduct rule provisions are made applicable equally to all broker–dealers and investment advisers — irrespective of the size of the firm — because the requirements involved are for the protection and benefit of Wisconsin customers of those firms. All Wisconsin customers of securities broker–dealers and investment advisers are entitled to the public investor protection benefits of such Prohibited Conduct rule requirements, irrespective of the size of the firm providing the securities services.

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

No new or additional reporting, bookkeeping, or other procedures are contained in the proposed rules.

Fiscal Estimate

State government fiscal impact

None

Local government fiscal impact

None

One–time revenue fluctuations

None

Long–range fiscal implications

None

Submission of Written Comments

Written comments in lieu of public hearing testimony may be submitted which must be received no later than the hearing date and should be addressed to the Administrator of the Division of Securities, 345 West Washington Avenue, PO Box 1768, Madison Wisconsin, 53701.

Copies of Proposed Rule and Agency Contact Person

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

Randall E. Schumann (608) 266–3414
 Legal Counsel for the Division of Securities
 Department of Financial Institutions
 345 West Washington Avenue, 4th Floor
 P. O. Box 1768
 Madison, WI 53701

Additionally, the full text of the proposed rules is available at the DFI Website: www.wdfi.org/securities&franchising.

Notice of Hearing Government Accountability Board

CR 08–078

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., and pursuant to a written request from Paul Malischke and more than 35 other electors of Wisconsin, the Government Accountability Board will hold a public hearing to consider adoption of a rule to repeal and recreate Chapter GAB 5, Wis. Adm. Code, relating to ballot security.

Hearing Information

The public hearing will be held at the time and location shown below.

<u>Date and Time</u>	<u>Location</u>
November 11, 2008 at 9:30 a.m.	Board's offices 201 W. Washington Avenue Madison

Analysis Prepared by the Government Accountability Board

Statutes interpreted

Sections 5.84, 5.86, 5.87, 5.90, 5.905, 5.91, 7.23, 7.51, and 9.01, Stats.

Statutory authority

Sections 5.05 (1) (f), 5.93 and 227.11 (2) (a).

Explanation of agency authority

The Government Accountability Board's rule on ballot security, under ss.7.23 and 7.51, Stats., has become outdated because of advances in technology and because of heightened administrative and public concerns about ballot security in light of recent security and chain-of-custody problems in elections both in Wisconsin and in other states. To address those concerns and to update ballot security in Wisconsin, the Board proposes to repeal and recreate chapter GAB 5, the ballot security rule.

Related statute or rule

Sections 5.66, 5.85, 5.86, 5.87, 5.90, 7.10, 7.15, 7.24, 7.37, 7.53, 9.01, and 12.13, Stats.

Plain language analysis

The proposed rule provides the requirements for maintaining the security of ballots that are cast at an election and maintaining the integrity of the tabulation of those ballots in the canvass of an election.

Comparison with federal regulations

Federal law does not apply to the preparation, printing, or security of ballots. Federal law does require that materials, including ballots, relating to any election in which a federal

office is on the ballot, must be preserved for not fewer than 22 months.

Comparison with rules in adjacent states

Illinois, Iowa, Michigan, and Minnesota all statutorily require that after ballots have been counted, they shall be secured in a sealed envelope or other container in such a manner that no ballot may be removed without breaking the seal on that container. The ballots and other election documents in those sealed containers are returned to the custody of the local election official who will hold them until they may be destroyed under state and federal law.

Generally, unlike Wisconsin's rule, the law in all four states provides for the retention of unused ballots until destruction of all ballots is authorized by state and federal law.

Summary of factual data and analytical methodologies

Adoption of the rule was predicated on federal and state mandate rather than on any factual data or analytical methodology.

Small Business Impact

The creation of this rule will have no effect on small business, nor any economic impact.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Submission of Written Comments

Written comments should be sent to the Government Accountability Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701–2973; email: elections.state.wi.us. The deadline for submitting written comments that will be included in the rule-making record is November 18, 2008.

Agency Contact Person

George A. Dunst, Staff Counsel
 Government Accountability Board
 17 West Main Street, P.O. Box 2973
 Madison, Wisconsin 53701–2973
 Phone: 608–266–0136
 Email: george.dunst@wisconsin.gov

Text of Proposed Rules

SECTION 1. Chapter GAB 5 is repealed and recreated to read:

Chapter GAB 5

Ballot and Electronic Voting System Security

GAB 5.01 Ballot security. (1) In this section:

- (a) "Board" means the government accountability board.
- (b) "Certificate of performance compliance" means the document provided by voting equipment vendors certifying that the equipment complies with the performance requirements of s. 5.91, Stats.
- (c) "Chain-of-custody" means the recorded movement and location of election ballots from the time of delivery of the ballots to the municipal clerk or board of election commissioners until the destruction of the ballots is authorized under s. 7.23, Stats.
- (d) "Custodian" means the election official who is authorized by chs. 5 to 12 to take possession and control of the ballots from the time of delivery of the ballots to the clerk or board of election commissioners until destruction of the ballots is authorized under s. 7.23, Stats.
- (e) "Electronic voting system" has the meaning given in s. 5.02 (4m), Stats.
- (f) "Firmware" means the computer software stored in read-only memory or programmable read-only memory.

(g) “Modem” means a device for transmitting data between two computers over telephone or other communication lines.

(h) “Results report” means the print-out of voting data by a piece of electronic voting equipment.

(i) “Software” has the meaning given in s. 5.905 (1), Stats.

(2) Within the requirements of s. 7.51 (3), Stats., the terms “secure” and “seal” shall be interpreted together to mean that the voted ballot container must be closed in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to the ballot container.

(3) Within the requirements of s. 7.51 (3) (a), Stats., a ballot container shall be considered “sealed” or “locked,” only if no voted ballot may be removed from or deposited into the container, and no other form of access to the ballots inside may be gained without leaving visible evidence of that entry or access into the container. Ballot bags shall be sealed with a tamper-evident, serialized numbered seal. The serial number shall be recorded on the signed ballot container certification (EB-101) attached to the bag. Serial numbers of the seals also shall be recorded on the Inspectors’ Statement (EB-104). Ballot boxes or containers shall have all potential openings secured in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to that ballot container. Ballot boxes or containers shall have attached a signed ballot container certification (EB-101).

(4) A sealed ballot container shall not be considered “secured” unless it is stored in a manner in which access to the container is limited only to the clerk of the election district, board of election commissioners, or to persons authorized by the clerk or the board of election commissioners, and access to which is not available to any other person.

(5) Whenever the custodian is required to open the ballot container and unseal the ballots as part of a central count proceeding under s. 5.86, Stats., board of canvass proceeding under Ch. 7, Stats., audit of electronic voting equipment after an election under s. 7.08 (6), Stats., recount or an appeal of a recount under s. 9.01, Stats., or as part of a public records request under s. 19.35, Stats., before opening the container the custodian shall record in the minutes of the proceeding whether the container is sealed and shall record the serialized number of the seal. The custodian shall make a record of the entry and of the ballot review. Upon completion of the review, the custodian shall re-secure them in the manner provided in s. 7.51, Stats., unless destruction is authorized under s. 7.23, Stats.

(6) Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. Destruction of the ballots authorized under s. 7.23, Stats., requires shredding, incineration, or some other form of obliteration of the ballots.

(7) At the time of a recount, the serial numbers on the seals of the ballot container shall be compared with the serial numbers written on the signed ballot container certification (EB-101). All containers shall be compared in a recount. The ward numbers and the results of the serial number verification shall be recorded in the minutes of the recount.

(8) The municipal clerk or board of election commissioners shall securely maintain all ballots from the time of receipt from the printer or county clerk through delivery to the polling place.

5.02 General electronic voting system security procedures. (1) These procedures apply to all electronic tabulating voting equipment memory devices, including

prom packs, memory cards, or any other removable memory devices that can be programmed or functioned to store and transfer ballot images or tabulation data.

(2) Throughout the life of the electronic voting system, the municipal or county clerk shall maintain control of all memory devices in a secure manner at all times. With the agreement of the municipal clerk or board of election commissioners, the county clerk or county board of election commissioners may store memory devices in a secure location. The municipal clerk or board of election commissioners shall secure all keys to the electronic voting equipment.

(3) For each election, there shall be a separate, written chain-of-custody record for each programmed memory device used with an electronic voting system. Each transfer shall be logged in the written chain-of-custody record.

(4) Each programmed memory device shall have or be assigned a unique and permanent serial number. If the memory device does not have a permanent serial number affixed by the manufacturer, a clerk shall, if possible, affix to the device a serial number or unique identifier.

(5) The municipality shall use controlled, serialized seals that are tamper-evident and resistant to accidental breakage along with a written record of all seals and associated serial numbers.

(6) For each election, the municipal clerk shall record on the Inspectors’ Statement (EB-104), which memory devices and which serialized tamper-evident seals are assigned to particular voting stations or units.

5.03 Pre-election procedures. (1) The clerk who has possession of the electronic voting systems or memory devices shall ensure that the equipment and memory devices have been secured properly since the previous election.

(2) Memory devices shall be programmed to print a list of the software and firmware versions of the electronic voting system on each beginning-of-election-day zero report under s. 5.84 (2), Stats. For electronic voting systems that cannot accommodate this requirement, the software and firmware information shall be recorded from the system start-up screen, either by municipal or county staff during the pre-election testing under s. 5.84 (1), Stats., or by election inspectors on Election Day under s. 5.84 (2), Stats.

(3) The records for the pre-election test under s. 5.84, Stats., pre-recount test under s. 5.90, Stats., and Election Day reports under ss. 7.51 and 7.53, Stats., must be maintained by the appropriate clerk or board of election commissioners.

(4) Except when necessary to program, test, or operate the electronic voting and/or programming equipment, any point by which access can be gained to the system controls must be closed and locked or secured with a tamper-evident seal that can be tracked using a unique and permanent serial number. The appropriate clerk shall maintain a written record of the serial numbers required by this subsection.

(5) After a memory device is programmed, tested, and delivered to the municipal clerk for the election, it shall be immediately and continuously maintained in a secure location with controlled access limited only to users authorized by the clerk or board of election commissioners.

Upon insertion of a memory device into its assigned unit, it shall be sealed against unauthorized access with a serialized, tamper-evident seal that can be tracked using a unique and permanent serial number. The municipal clerk or board of election commissioners shall record the serial numbers on the Inspectors’ Statement (EB-104).

(6) When applicable, for each election the municipal or county clerk or board of election commissioners shall obtain

a signed “Certificate of Performance Compliance: Memory Device Security” from each voting equipment manufacturer that provides programming services or memory devices to the municipality or county.

(7) The municipality shall take reasonable precautions to ensure the security of the equipment between the time it leaves the possession of the clerk or board of election commissioners to be delivered to the polling place, and the time the chief inspector assumes possession at the polling place on Election Day.

5.04 Election–day procedures. (1) Before any ballots are cast on any piece of voting equipment, the integrity of the tamper–evident seals shall be verified by the chief election inspector verifying that the tamper–evident seal serial number on the Inspectors’ Statement (EB–104) matches the tamper–evident seal serial number contained on the electronic voting equipment. Any irregularity or discrepancy between the two numbers shall be reconciled before using the equipment.

(2) After the polls have opened, ballot removal from an optical scan machine or paper roll removal or replacement on a direct recording electronic (DRE) machine shall be conducted with at least two election inspectors (or other sworn election team members appointed by the municipal clerk or board of election commissioners) present. The removal process, the names of the election inspectors or sworn election team members, and the time of removal must be recorded on the Inspectors’ Statement (EB–104).

(3) After the polls have closed, election officials shall print a results report before breaking any seal on the equipment and before the removal of the memory device from any piece of voting equipment. If additional reports other than the results reports are required, these reports shall also be printed before breaking any seal on the equipment and before the removal of the memory device.

(4) The chief election inspector shall compare the serial numbers of all security seals, then verify by initialing the Inspectors’ Statement (EB–104). Any additional seals used during the election must also be recorded on the Inspectors’ Statement (EB–104).

(5) The memory device shall be secured in a separate, tamper–evident sealed container or envelope by the chief election inspector. The memory devices shall be promptly returned to the municipal or county clerk or board of election commissioners.

(6) If vote results are transmitted by modem, the municipal clerk or board of election commissioners may access the memory device for transmission of those results, but shall reseal the memory device in a secured envelope or container.

(7) If removal of the memory device is not required, the device may remain sealed in the voting equipment. The serial numbers of the security seals shall be verified and initialed on the Inspectors’ Statement (EB–104).

5.05 Post election procedures. (1) After each election, the clerk or board of election commissioners responsible for storing the voting equipment shall conduct an inspection to ensure all system access points are closed, locked, and secured.

(2) At each post–election meeting of the municipal board of canvassers, the members shall verify that the tamper–evident serial numbers from the voting equipment have been recorded on five Inspectors’ Statements (EB–104) or 10% (whichever is greater) of the total statements, and have been initialed by the Chief Election Inspector. The county

board of canvassers shall verify ten Inspectors’ Statements. All Inspectors’ Statements (EB–104) shall be verified by the appropriate board of canvassers in a recount. Proper documentation shall be maintained.

5.15 Alternate security procedures. (1) The Government Accountability Board recognizes the need for flexibility when implementing these procedures, and acknowledges that alternative means may be used to achieve and ensure an acceptable level of electronic voting equipment security.

(2) The Board will consider requests from counties to implement alternative security procedures.

(a) The county clerk, or the municipal clerk or board of election commissioners through the county clerk or county board of election commissioners, shall submit a written request to implement alternative security procedures to the Board’s director and general counsel.

(b) The request shall describe the proposed security procedures in detail and include any documentation such as logs, flow charts, and certification forms.

(c) The director and general counsel may approve the use of alternative security procedures for one election cycle.

(d) The Board shall review the director and general counsel’s approval of any alternative security procedures and may authorize continued use of those procedures.

Notice of Hearing

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

CR 08–088

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats., the Professional Counselor Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend sections MPSW 11.01 (1) (b), 12.01 and 14.01 (2) (intro.); and to create section MPSW 12.01 (3) and (4), relating to supervised practice, training licenses and academic programs for professional counselors.

Hearing Information

Date: October 27, 2008
Time: 9:15 a.m.
Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson Street)
 Room 121A
 Madison, Wisconsin

Analysis Prepared by the Department of Regulation and Licensing

Statutes interpreted

Sections 457.12 and 457.13, Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats.

Explanation of agency authority

The Marriage and Family Therapy, Professional Counseling and Social Work Examining Board has the authority under s. 457.03, Stats., to promulgate rules.

Related statutes or rules

There are no other related statutes or rules other than those listed above.

Plain language analysis

One of the requirements for becoming licensed as a professional counselor is the accrual of 3,000 hours of supervised practice. The addition of s. MPSW 12.01 (3) and (4) is intended to permit applicants who are interested in becoming licensed in Wisconsin as professional counselors to use supervised professional counselor practice hours that were accrued in another state. The existing rules do not allow the professional counselor section to consider supervised practice hours that were obtained out-of-state. These changes are intended to remedy that situation and will likely result in more clinicians being eligible to practice in Wisconsin.

SECTION 1 adds the acronym “CORE” for the Council on Rehabilitation Education, to make it consistent with the rest of the paragraph.

SECTION 2 provides for an exception to the requirement that applicants obtain their supervised professional counseling practice in another state. It also amends the section to make it clear that a training license is required in order to begin accruing supervised professional counseling hours.

SECTION 3 allows applicants who obtained their supervised professional counseling practice hours in another state to be given credit for those hours provided they are sufficiently clinical in nature and are completed under the direction of a supervisor acceptable to the professional counselor’s section.

SECTION 4 clarifies that a single counseling theory course is required. It also eliminates the requirement that certain courses be a minimum of three credits, instead allowing for multiple courses to count towards the required credit amount.

Comparison with federal regulations

There is no applicable existing federal legislation.

Comparison with rules in adjacent states

Minnesota. Minnesota requires a 48 credit minimum master’s or doctoral degree in counseling. The degree must be from a regionally accredited institution or the degree program accredited through the Commission for Accreditation of Counseling and Related Educational Programs (CACREP). The board requires specific topic areas, similar or equivalent to that of Wisconsin’s, however will automatically accept CACREP as meeting the standards in the statutes.

If the applicants graduated prior to 2003 and they hold a master’s degree with 5 years of experience, they are exempt from the 48 credit or CACREP requirement (experience counselor transition language found in the statutes).

Interestingly, a license applicant may apply and receive the license only after completing 12 semester hour graduate credits with the qualification that they complete the remainder in 4 years.

The supervised practice requirement is post licensure (first 2,000 hours).

Iowa. Iowa licenses mental health counselors rather than professional counselors. To qualify for licensure in Iowa, an applicant must either demonstrate that they hold a master’s or doctoral degree in counseling with a mental health counseling concentration from a CACREP accreditation specifically in mental health counseling (CACREP accredits both community counseling and mental health counseling). If they do not have a CACREP mental health counseling degree, they must submit a “content equivalent degree of at least 45 hours over a number of counseling specific areas (similar to Wisconsin). The courses in the program must be made up of 3 semester hour courses.

Iowa requires 2 years of supervised clinical practice completed post coursework and practicum (but the applicant may start to accumulate hours prior to their thesis – curious). There does not appear to be a training level or limited credential to practice under while accumulating the hours. It appears that Iowa MHC is envisioned as “clinical” licensure meaning expectations for DSM IV diagnosis and treatment of mental health disorders rather than the more common community counselor level. This is evident in the requirement for CACREP mental health counselor accreditation and the psychopathology requirement in the equivalency.

It is not clear that Iowa approves programs or approves applicants on an as reviewed basis (though from the application materials and the lack of an approval list, it appears through the latter).

Iowa considers applicants who have obtained Certified Clinical Mental Health Counselor status with the National Board for Certified Counselors (NBCC) as having met the educational and clinical experience requirements necessary for licensure.

Illinois. Licensure requires a master’s or doctoral degree in counseling, psychology or rehabilitation counseling. Illinois will also accept a bachelor’s degree in the aforementioned programs along with 5 years of supervised practice.

Beginning January 1, 2005, the Illinois licensing division approves programs that are 48 hours minimum in length with at least one course in each of the 13 identified content areas. After January 1, 2008, Illinois is requiring that the courses submitted be at least 3 semester hours in length (similar to Wisconsin’s equivalency standards).

It appears that Illinois preapproves programs on a per school basis. All Master’s Degree programs that are CACREP or Council on Rehabilitation Education (CORE) accredited are automatically considered approved. All Doctoral degree programs in psychology of the APA or the Council for the National Register of Health Service Providers in psychology are preapproved.

For those who graduate in a program that has not been approved, they will have to submit their transcripts and program materials to the board for review.

Michigan. Professional Counseling Licensure requires a master’s or doctoral degree in counseling or student personnel work in a program approved by the board. The license also requires 3,000 hours of supervised practice. Effective January 1, 2005, the supervision shall begin upon the issuance of a limited license.

The board has program approval standards that describe the approval of counselor training programs which includes a minimum of 48 hours over a number of specified topic areas without any minimum credit hour per course requirement. The board shall also accept any programs accredited by CORE or CACREP as automatically approved.

Summary of factual data and analytical methodologies

The Professional Counselor Section is amending their degree equivalency rules which require a minimum of a one 3–credit semester hour or 4–quarter hour course in a number of “topic areas” to eliminate the minimum 3–credit–course requirement. The section has found that applicants denied for licensure based on the 3–credit–course requirement for degree equivalency are licensable in other states and have been practicing successfully in Wisconsin under the exemption in the statutes allowing psychotherapeutic practice in s. HFS 61.96 certified clinics. In addition, the Council for Accreditation of Counseling and Related Education

Programs (CACREP), a nationally recognized accreditation body, does not specify a 3–credit–course minimum.

The section is also amending their rules to include a requirement to hold a professional counselor training license in order to accrue hours of supervised professional counseling practice towards licensure. The practice of professional counseling is a protected practice (pursuant to s. 457.04 (6), Stats.); however, the requirement to hold a training license in order to accrue supervised professional counseling practice hours is not found explicitly in the rules. The section has found that people practicing professional counseling without training certification or licensure may constitute a violation of law and could pose a significant risk to the health, safety and well–being of the public. In addition to adding the requirement for accruing supervised hours while holding the training license, the section has determined that due to increased mobility, such rules should also include flexibility in considering practice hours gained out of state if those hours are substantially equivalent to practice hours gained in other states.

Analysis and supporting documents used to determine effect on small business

The changes proposed should not provide substantial negative effect on small business in terms of increased operating costs. Since approximately 2004, the section has attempted to advise those entering the field that in order to practice and train for full licensure, one needs to accrue hours under a training license. The cost to obtain a training license is \$53 and expires after four years (and is renewable at the discretion of the section). The benefit of a training license is that it assures the trainee that their supervisor is approved. The benefit to the public is that they can be assured that the training license holder has met certain standards required for safe practice under supervision – including that they hold an approved master’s degree in professional counseling and they have passed the State ethics examination – and that they are required to observe their code of conduct, violation of which opens practitioners to disciplinary action.

The additional changes, including changes for purpose of clarification, elimination of minimum credit per course requirements and acceptance of supervised hours gained out–of–state will make it easier for applicants to achieve state licensure thus helping to assure availability for the workforce and does not without compromising public safety.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule–making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Small Business Impact

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling 608–266–8608.

Fiscal Estimate

Summary

The department estimates that this rule will require staff time in the Office of Legal Counsel, Office of Exams, and the Division of Professional Credentialing. The total one–time salary and fringe costs are estimated at \$2,533.

Anticipated costs incurred by private sector

The department finds that this rule has no significant fiscal effect on the private sector.

Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email to pamela.haack@drl.state.wi.us. Comments must be received on or before November 10, 2008 to be included in the record of rule–making proceedings.

Agency Contact Person

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–266–0495; email at pamela.haack@drl.state.wi.us.

Text of Proposed Rules

SECTION 1. MPSW 11.01 (1) (b) is amended to read:

(b) Verification that the institution which awarded the degree was a regionally accredited college or university, or accredited by the commission for accreditation of counseling and related educational programs (CACREP), or the council on rehabilitation education (CORE) at the time the applicant graduated from the school, or that a degree awarded by a foreign institution of higher learning has been determined by the National Board for Certified Counselors (NBCC) or by another organization approved by the section to be equivalent to a degree from a program accredited by CACREP. If the applicant’s education was not received in English, the applicant must demonstrate proficiency in English by achieving a score of 550 (or 213 on the computer–based exam) or above on the Test Of English as a Foreign Language (TOEFL) or an equivalent score on an equivalent examination.

SECTION 2. MPSW 12.01 is amended to read:

MPSW 12.01 Supervised practice requirement. An Except as provided in sub. (3), an applicant for licensure as a professional counselor under s. 457.12, Stats., shall complete a period of supervised practice to become while holding a training license before being eligible for the license licensure. Supervision of the practice of professional counseling undertaken to meet the pre–licensure requirement may be exercised by a person other than an employment supervisor. The supervisor may exercise discretion as to the frequency, duration, and intensity of the supervision sessions to meet an average of one hour of supervision per week during the supervised practice period.

SECTION 3. MPSW 12.01 (3) and (4) are created to read:

(3) An applicant who has received a master’s degree in professional counseling or its equivalent and has completed any portion of his or her 3,000 hours of supervised professional counseling practice in another state shall be given credit for those hours provided they included at least 1,000 hours of face–to–face client contact, or a proportionate number thereof, and are completed under the supervision of a supervisor acceptable to the professional counselor section.

(4) An applicant who has received a doctoral degree in professional counseling or its equivalent and has completed any portion of his or her 1,000 hours of supervised professional counseling practice in another state shall be given credit for those hours provided they are completed under the supervision of a supervisor acceptable to the professional counselor section.

SECTION 4. MPSW 14.01 (2) (intro.) is amended to read:

(2) (intro.) The course work included successful completion of at least 3 semester hours or 4 quarter hours academic credit in a supervised counseling practicum; at least 3 semester hours or 4 quarter hours academic credit in a single counseling theory course; and ~~at least one course of~~ at least 3 semester hours or 4 quarter hours academic credit in at least 6 of the following 8 topic areas; and the course work included a total of at least 42 semester hours or 63 quarter hours of academic credit in counseling related courses distributed among at least 6 of the following 8 topic areas:

Notice of Hearing

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

CR 08–089

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 457.03 (3), Stats., the Social Worker Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. MPSW 3.09 (3) and 3.13 (3) (a); and to create s. MPSW 3.09 (7), relating to practice hours and internship for social workers.

Hearing Information

Date: October 29, 2008
Time: 9:15 a.m.
Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson Street)
 Room 121A
 Madison, Wisconsin

Analysis Prepared by the Department of Regulation and Licensing

Statutes interpreted

Sections 457.08 (4) and 457.09 (4) (b) 1., Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 457.03 (3), Stats.

Explanation of agency authority

The Marriage and Family Therapy, Professional Counseling and Social Work Examining Board has the authority under s. 457.03, Stats., to promulgate rules.

Related statutes or rules

There are no other related statutes or rules other than those listed above.

Plain language analysis

Among the requirements for becoming licensed in Wisconsin as a clinical social worker is the completion of at least 3,000 hours of supervised clinical practice, including 1,000 hours of face–to–face client contact. Currently, the social worker section cannot consider those hours that were accrued out–of–state, despite the fact that the applicant may

have met all of the other requirements for licensure. As a result, the section is amending its rules to permit consideration of clinical social work practice hours accrued out–of–state under an appropriate supervisor. It is also adding a provision to its rules for social worker training certificates to ensure that applicants have completed a human services internship under the auspices of an accredited college or university.

One of the requirements for becoming licensed as a clinical social worker is the accrual of 3,000 hours of supervised practice. The changes to s. MPSW 3.09 are intended to permit applicants who are interested in becoming licensed in Wisconsin as clinical social workers to use supervised clinical social work practice hours that were accrued in another state. The existing rules do not allow the social worker section to consider clinical hours that were obtained out–of–state. These changes are intended to remedy that situation and will likely result in more clinicians being eligible to practice in Wisconsin.

The section is also modifying s. MPSW 3.13 (3) (a) to clarify that a human services internship used to meet one of the requirements for an entry–level social work credential be completed under the auspices of an accredited college or university.

SECTION 1 provides for an exception to the requirement that applicants obtain their supervised clinical social work practice in another state. It also amends the term “pre–certification” to “pre–licensed.”

SECTION 2 allows applicants who obtained their supervised clinical social work practice hours in another state to be given credit for those hours provided they are sufficiently clinical in nature and are completed under the direction of a supervisor acceptable to the social worker section.

SECTION 3 requires that a human services internship be completed under the auspices of an accredited college or university.

Comparison with federal regulations

There is no existing or proposed federal regulation for summary and comparison.

Comparison with rules in adjacent states

Iowa. Iowa has two levels of master’s level social work licensure, the licensed master social worker (LMSW) and the licensed independent social worker (LISW). The LISW is the highest–level of social work licensure and requires a master’s or doctoral degree in social work and 4,000 hours of supervised practice. There does not appear to be any explicit requirement that a person hold the Iowa LMSW before accumulating the supervised practice experience. (Wisconsin rules explicitly require applicants to achieve certification as an advanced practice social worker or independent social worker prior to accumulating supervised practice hours toward clinical social work licensure.) Iowa’s rules do require that before applying for the LISW, the “social worker” must have received a master’s or doctoral degree in social work and practiced at that level.

As to the proposed changes to the internship requirements under the social worker training certificate, Iowa does not have a training certificate or equivalency process for converting a health services degree into a bachelor’s degree in social work.

Iowa’s administrative rules for licensure of social work are found under chapter 280 of Iowa administrative rule.

Illinois. Illinois has two levels of social work licensure, the licensed social worker and licensed clinical social worker. The clinical license requires 3,000 hours of supervised

practice before being eligible for clinical licensure. There does not appear to be any explicit requirement that a person hold the social worker license before accumulating the supervised practice experience. (Wisconsin rules explicitly require applicants to achieve certification as an advanced practice social worker or independent social worker prior to accumulating supervised practice hours toward clinical social work licensure.) There are explicit provisions in Illinois administrative code which would allow applicants to count hours gained in other jurisdictions outside of Illinois towards clinical licensure.

As to the proposed changes to the internship requirements under the social worker training certificate, Illinois does not have a training certificate or equivalency process for converting a health services degree into a bachelor's degree in social work.

Illinois' administrative rules for licensure of social work are found under Title 68, Part 1470.

Michigan: Michigan has a master's level social work license, aptly entitled Master's Social Work License. An applicant for the license must indicate the area of intended practice on the application, which includes a license designation of "macro" or "clinical." The macro designation, also known as an administrative designation, is similar to the Wisconsin independent social worker certification and denotes advanced generalist practice of social work. The clinical designation is similar to the Wisconsin clinical social work license and denotes therapeutic clinical practice. The clinical designation requires at least 4,000 hours of supervised practice under the supervision of a Michigan-licensed master's social worker *or a person who holds the equivalent license, certificate, or registration from the state in which the experience was obtained.* To obtain the supervised practice experience required for licensure – for Michigan residents – the administrative rules appear to require that the applicant holds a limited master's level social work license, however there are provisions, as noted above, which allow transference of hours from jurisdictions outside of Michigan so long as the supervisor held an equivalent credential to that of a Michigan licensed master's level social worker.

As to the proposed changes to the internship requirements under the social worker training certificate, Michigan does not have a training certificate or equivalency process for converting a health services degree into a bachelor's degree in social work.

Michigan's administrative rules for licensure of social work are found under sections R. 338.2901 to R. 338.2910.

Minnesota: Minnesota has three levels of master's degreed social work licenses, the graduate social worker, independent social worker and the licensed independent clinical social worker, the latter license being the most similar to Wisconsin's licensed clinical social worker. To qualify for the independent clinical social work license in Minnesota requires 4,000 hours of supervised practice. The rules require that Minnesota residents acquire the supervised practice under the graduate social worker or independent social worker license. The rules also specify that that supervised practice must be acquired under a licensed independent clinical social worker, a "mental health professional" (under state regulatory rules of healthcare locations, a mental health professional includes a certified psychiatric nurse, clinical social worker, a psychologist, psychiatrist or marriage and family therapist) or an equivalent mental health professional who is credentialed by another state, territorial, provincial, or foreign licensing agency. This appears to indicate that they could acquire supervised practice hours outside of Minnesota, but this is not explicitly indicated in statute.

As to the proposed changes to the internship requirements under the social work training certificate, Minnesota does not have a training certificate or equivalency process for converting a health services degree into a bachelor's degree in social work.

Minnesota regulates social work under Minnesota statutes sections 148D.001 to 149D.290.

Summary of factual data and analytical methodologies

Regarding changes to rules allowing acceptance of hours gained out of state: The Social Worker Section has found that a small number of applicants for clinical social work licensure have recently located to Wisconsin and have applied to the Section with supervised practice gained out of state. The Marriage and Family Therapy, Professional Counseling and Social Work Examining Board's rules require that applicants for clinical social work licensure acquire supervised practice while holding a Wisconsin certification as an advanced practice social worker (APSW) or independent social worker (ISW) under an approved supervisor; consequently the Section has denied these applications for licensure on the grounds that they were not acquired under an appropriate credential. The Section, in review of the supervised experience gained out of state, opines that as the credentialing authority, they should be able to review supervised experience gained out of state, and if found adequate, the Section should be able to accept the applicant's experience as sufficient for achieving clinical social work licensure.

Regarding changes to rules specifying internship requirements for social work training certificate holders: The rules specifying the requirements for converting a human services degree to a bachelor's degree in social work degree require that a person complete an approved human services internship of 400 hours or one year of social work employment with at least 400 hours of face-to-face client experience. Under existing social work programs, human services internships are structured and concentrated social work experiences designed to adequately educate and prepare students for the rigors of professional practice under guidance of an academic program and are not to be considered as abbreviated employment. To compensate for the lack of academic structure and focus by the academic programs, the rules also allow for an applicant to submit one full year of full-time social work practice with at least 400 hours of face-to-face client contact if they did not have the benefit of the internship. In review of internships submitted by applicants for certification through degree equivalency, the Section has found instances of self structured internships which appear to be nothing more than volunteer social work experiences, essentially unpaid social work employment, submitted as a human services internship. These internships are substantially shorter than the one year of social work experience, and in some cases substantially shorter than those human services internships provided by an academic program; furthermore, they lack benefit of oversight and guidance provided by an academic institution. The Section has found that the current rules do not adequately define the social work internship, therefore preventing the section from denying the applications on the basis that their internship was not provided by an academic institution, and therefore did not adequately prepare the applicant for meeting the minimum competencies required for safe practice.

Analysis and supporting documents used to determine effect on small business

Adjusting the rules for accepting supervised hours gained out of state should not impact small business. The effect of the rule change, if effected, will allow a small number of

applicants that the social worker section has identified as attempting to transfer their supervised practice gained out of state to qualify for clinical licensure rather than having to complete two additional years of supervised practice. Based on application reviews, the section estimates this number to be less than five on an annual basis.

The section anticipates that clarifying the rules regarding the required human services internship to include a requirement that the internship be provided by an academic program or internship to have negligible or no impact on small business. Adjusting the internship requirement to require academic oversight may decrease human services employers (state certified clinics, community support programs, correctional institutions) access to free labor; however, the actual numbers of these applicants appear to be extremely low, and in recent experience the section estimates approximately ten or fewer applicants submit volunteer experiences as internships. Additionally, increasing academic oversight should result in better preparation of social workers.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule–making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Small Business Impact

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266–8608.

Fiscal Estimate

Summary

The department estimates that this rule will require staff time in the Office of Legal Counsel. The total one–time salary and fringe costs are estimated at \$16,477.

Anticipated costs incurred by private sector

The department finds that this rule has no significant fiscal effect on the private sector.

Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of

Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email at pamela.haack@drl.state.wi.us. Written comments must be received by November 10, 2008, to be included in the record of rule–making proceedings.

Agency Contact Person

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935; telephone 608–266–0495; email pamela.haack@drl.state.wi.us.

Text of Proposed Rule

SECTION 1. MPSW 3.09 (3) is amended to read:

(3) An Except as provided in sub. (7), an affidavit that the applicant, after receiving a master’s or doctoral degree and after receiving certification as an advanced practice social worker or an independent social worker, has completed at least 3,000 hours of clinical social work practice in no less than 2 years, including at least 1,000 hours of face–to–face client contact and including DSM diagnosis and treatment of individuals, under the supervision of a supervisor approved by the social worker section. Pre–certification Pre–licensed supervised practice shall meet the criteria under s. MPSW 4.01.

SECTION 2. MPSW 3.09 (7) is created to read:

(7) An applicant who after receiving a master’s or doctoral degree in social work and completing any portion of their 3,000 hours of supervised clinical social work practice in another state will be given credit for those hours provided they included at least 1,000 hours of face–to–face–client contact, or a proportionate number thereof, and also included DSM diagnosis and treatment of individuals, completed under the supervision of a supervisor acceptable to the social worker section.

SECTION 3. MPSW 3.13 (3) (a) is amended to read:

(a) A human services internship of at least 400 hours that was part of the program leading to the degree the certificate holder specified to satisfy the requirement in s. 457.09 (1) (c) and (4m) (b), Stats., or completed while holding the training certificate, and involved direct practice with clients and that was supervised by a social worker certified under s. 457.08, Stats., and who has a bachelor’s or master’s degree in social work and provides direct, on–site supervision of the intern. A human services internship shall be under the auspices of an accredited college or a university.

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

Flammable and Combustible Liquids, Ch. Comm 10

CR 07–029

Revises Chapters Comm 2, 10, 14, 47 and 48, relating to flammable, combustible and hazardous liquids.
Effective 12–1–08.

Commerce

Amusement Rides, Ch. Comm 34

CR 08–054

Revises Chapter Comm 34, relating to amusement rides.
Effective 1–1–09.

Commerce

Boilers and Pressure Vessels, Ch. Comm 41 Mechanical Refrigeration, Ch. Comm 45

CR 08–028

Revises Chapters Comm 41 and 45, relating to boilers and pressure vessels and mechanical refrigeration.
Effective 12–1–08.

Government Accountability Board

CR 08–024

Creates Chapter GAB 12, relating to the certification and training of municipal clerks.
Effective 12–1–08.

Natural Resources

Fish, Game, etc., Chs. NR 1–

CR 08–010

Revises Chapters NR 20, 21, 22 and 23, relating to fishing on the inland, outlying and boundary waters of Wisconsin.
Effective 12–1–08 and 4–1–09.

Natural Resources

Fish, Game, etc., Chs. NR 1–

CR 08–021

Revises Chapters NR 1, 8, 10, 11, 12, 15, 16, 17 and 19, relating to hunting, trapping, captive wild animals, dog training, nuisance animal removal, wildlife rehabilitation and license issuance.
Effective 12–1–08.

Natural Resources

Fish, Game, etc., Chs. NR 1–

CR 08–023

Revises Chapter NR 46, relating to the administration of the forest crop law and managed forest law.
Effective 11–1–08.

Natural Resources

Environmental Protection – General, Chs. NR 100–

CR 07–110

Revises Chapter NR 105, relating to surface water quality criteria.
Effective 12–1–08.

Natural Resources

Environmental Protection – Water Regulation, Chs. NR 300–

CR 07–094

Revises Chapters NR 320, 323, 328, 329, 341, 343 and 345, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.
Effective 12–1–08.

Regulation and Licensing

CR 08–040

Amends section RL 16.06, relating to the usage of approved forms for the practice of real estate.
Effective 11–1–08.

Veterinary Examining Board

CR 07–051

Revises Chapters VE 1, 7, and 10, relating to continuing education, informed consent and recordkeeping.
Effective 11–1–08.

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