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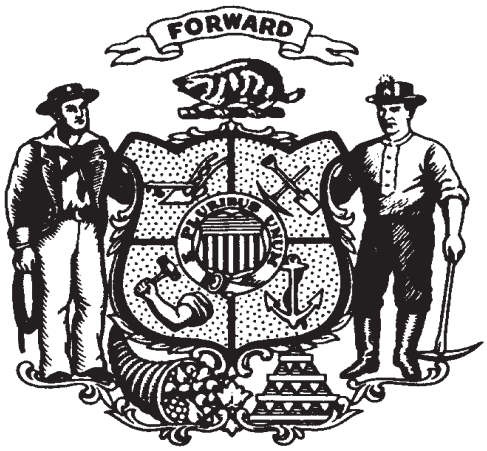

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Emergency rules now in effect

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

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

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

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

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.

Agriculture, Trade and Consumer Protection

Rules adopted revising **ch. ATCP 77,** relating to certification of drug residue screening laboratories and approval of laboratory analysts to perform drug residue screening tests on milk.

Finding of emergency

The Department of Agriculture, Trade and Consumer Protection ("department") finds that an emergency exists and that the following emergency rule is necessary to protect the public welfare. This emergency rule will bring Wisconsin into compliance with federal requirements. Wisconsin must comply with the federal requirements in order for Wisconsin dairy plants to continue shipping milk in interstate commerce. Interstate milk shipments are critical for the state's dairy industry, and for the overall economy and well being of the state. The facts constituting the emergency are as follows:

(1) Grade A milk shipments are governed by the Interstate Pasteurized Milk Ordinance (PMO), jointly administered by the United States Food and Drug Administration (FDA) and the National Conference of Interstate Milk Shippers (representing participating states). In order for Wisconsin dairy plants to ship milk in interstate, Wisconsin must comply with the PMO and FDA mandates related to the PMO. Under s. 97.24, Stats., the Wisconsin Legislature has directed the department to adopt rules that conform to the PMO.

(2) Under the PMO and current state rules, all raw milk received by a dairy plant must be tested for certain drug residues (antibiotics from the penicillin family of drugs).

(3) FDA approves tests used for drug residue testing. There are 15 different tests that are approved for use. Some of these tests use a mechanical reader that determines the test result and then records it on a printer tape or directly to a computer. But other approved tests are "visually read", and involve no mechanical reader. In these tests, an individual analyst interprets a color change to determine whether drug residues are present.

(4) The department currently certifies laboratories and analysts that conduct confirmatory drug residue tests on raw milk samples. The department certifies these laboratories and analysts under ch. ATCP 77, Wis. Adm. Code. The department does not currently certify laboratories or analysts that perform only preliminary screening tests for drug residues, although it does provide training. Some preliminary screening tests use mechanical readers, while others are "visually read."

(5) On July 2, 2001, FDA issued a new directive requiring states to approve laboratories that conduct screening tests (not just confirmatory tests) for drug residues in milk. A state must conduct an on−site evaluation before approving a laboratory or analyst to conduct "visual read" screening tests. According to the FDA, the department must complete its evaluations and issue its approvals by March 1, 2002. FDA may de−certify Wisconsin milk shippers if the department fails to carry out this directive, or if milk shipments are not tested by approved laboratories and analysts. De−certification could prevent the movement of Wisconsin milk in interstate commerce.

(6) In order to ensure the continued movement of Wisconsin milk in interstate commerce, the department must adopt rules expanding the current lab certification program under ch. ATCP 77, Wis. Adm. Code. The rules will require certification of laboratories conducting drug residue screening tests. The rules will also require on−site evaluation and approval of individual analysts conducting "visual read" screening tests. The rules will create new lab certification fees to pay for the expanded program, including the cost to perform the required on−site evaluations. The department must adopt these rules as soon as possible, in order to complete the required evaluations and issue the required approvals by March 1, 2002.

(7) The department cannot create this new program, by normal rulemaking procedures, in time to meet the March 1, 2002 deadline. The department is therefore adopting this temporary emergency rule under s. 227.24, Stats., pending the adoption of "permanent" rules by normal procedures. This emergency rule is needed to ensure the continued movement of Wisconsin milk in interstate commerce, and to prevent the economic disruption that would occur if that movement were interrupted.

Publication Date:	**November 15, 2001**
Effective Date:	**November 15, 2001**
Expiration Date:	**April 14, 2002**
Hearing Dates:	**November 29, December 4, 5 & 6, 2001**

Commerce (3)

(Financial Assistance for Businesses and Communities)
(Chs. Comm 105−128)

1. Rules adopted revising **ch. Comm 110** relating to brownfields redevelopment grants.

Finding of emergency

The Department of Commerce finds that an emergency exists and that adoption of the rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under section 3628 of 2001 Wis. Act 16, the Department must begin

accepting applications from trustees and nonprofit organizations, for brownfields redevelopment grants. And, under section 3630 of the Act, the Department must begin disallowing use of the grant funds to pay either delinquent real estate taxes or lien claims of the Department of Natural Resources or the federal Environmental Protection Agency.

The Department's rules for administering the brownfields grant program are currently contained in ch. Comm 110 Wis. Adm. Code. These current rules do not recognize trustees and nonprofit organizations as eligible applicants, and do not include disallowing grant funds for payments on either back taxes, or on state or federal lien claims.

In November, the Department expects to begin promulgating permanent rules for making ch. Comm 110 consistent with Act 16. Due to the mandatory rulemaking procedures under ch. 227, Stats., the permanent rules are not expected to become effective until July 1, 2002. In order to comply with Act 16 by accepting applications and issuing grants for trustees and nonprofit organizations prior to then, emergency rules reflecting these changes are needed, as included herein. These emergency rules also address the above disallowance for grant proceeds, and include some minor updating of the ch. Comm 110 criteria for submitting grant applications and for filing subsequent financial and program reports.

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

Publication Date:	**October 27, 2001**
Effective Date:	**October 27, 2001**
Expiration Date:	**March 26, 2002**

2. Rules adopted revising **ch. Comm 108**, relating to community development block grant program.

Finding of emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

The facts constituting the emergency are as follows:

• Under the state's Consolidated Plan for the expenditure of U.S. Department of Housing and Urban Development Funds (HUD), the department has available Community Development Block Grant Funds specifically for community and economic development projects that typically are planned and designed during the winter months for commencement when the ground thaws.

• Having the ability to make these grants available at this time would assist eligible local governmental units with their project planning, obtain bids during a time when bids can be as much as 20 percent less than bids obtained in late winter or early spring, and allow for construction start−up early in the spring.

• Project readiness is a consideration in awarding grants under this program.

• Bid letting and contract approvals made prior to the construction season may allow for the completion of construction projects within one construction season.

• The acceptance and funding of applications at this time will provide an economic stimulus at the local government level in the form of planning, engineering and particularly construction contracts which offer high paying jobs.

This rule revision relates to changes in definitions which occurred in the 1999 Wis. Act 9; additional program funds now available from U.S. Housing and Urban Development (HUD); revising the application schedule on a continuing basis; and updating the process of scoring applications.

Currently public facility grants to eligible communities are awarded annually. Under this proposal, grants can be awarded throughout the year making it easier for communities to prepare and submit their proposals.

The rule revisions reflect the expansion of funding programs for public facilities planning to issue grants to eligible local governments for public facilities planning up to $12,500 per plan.

Publication Date:	**December 1, 2001**
Effective Date:	**December 1, 2001**
Expiration Date:	**April 30, 2002**
Hearing Date:	**January 16, 2002**
	[See notice this Register]

3. Rules adopted creating **ch. Comm 107**, relating to Wisconsin Technology Zone Program.

Finding of emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

Facts constituting the emergency are as follows:

• In accordance with s. 560.02 (4), Stats., the department of Commerce has the responsibility to promulgate rules to provide for the attraction, promotion and expansion of high−technology business in the state.

• Section 560.96, Stats., makes available certain tax benefits for certified businesses within the 8 designated technology zones. Tax benefits are available to certified businesses if their tax year begins on or after January 1, 2002.

• In response to a downturn in the economy and recent economic forecasts, Governor McCallum has prioritized the need to promulgate these rules as part of his economic stimulus package.

• The technology zone program will address several action items identified by the 2000 Wisconsin Economic Summit to ensure Wisconsin's short− and long−term economic vitality and success, including:

1. Combating the state's 'brain drain' by increasing high tech jobs.

2. Linking Wisconsin's research expertise with Wisconsin firms to grow clusters of high−tech jobs.

3. Linking economic strategies across regions for power through collaboration.

• This emergency rule is being created in order that the process of designating the 8 technology zones be commenced as soon as possible and that such eligible businesses may become certified and participate in the tax benefits through the Wisconsin Technology Zone Program.

Publication Date:	**December 5, 2001**
Effective Date:	**December 5, 2001**
Expiration Date:	**May 4, 2002**

Financial Institutions − Banking

A rule was adopted creating **s. DFI−Bkg 80.90,** relating to registration fees under the Wisconsin Consumer Act.

Finding of emergency

2001 Wis. Act 16 authorizes the Department of Financial Institutions to adopt rules pertaining to registration fees under the Wisconsin Consumer Act. The proposed rule revises the

formula for calculating these fees. Without this rule, the department is unable to effectuate the legislature's requirement that registrations be completed by February 28, 2002.

Publication Date: **December 3, 2001**
Effective Date: **December 3, 2001**
Expiration Date: **May 2, 2002**

Financial Institutions − Corporate and Consumer Services

Rules adopted repealing **ch. SS 3** and repealing and recreating **chs. DFI−CCS 1 to 6**, created as emergency rules, relating to the Uniform Commercial Code.

Finding of emergency

2001 Act 10 repealed and recreated the Wisconsin Uniform Commercial Code ("UCC"), effective July 1, 2001. The act authorizes the Department of Financial Institutions to promulgate rules to implement the UCC. Without these rules, the department will be unable to operate either a state−wide lien filing system or give effect to the provisions of the UCC before permanent rules can be promulgated. The act is part of an effort by the National Conference of Commissioners on Uniform State Laws and all member states to implement a revised model Uniform Commercial Code on July 1, 2001 to facilitate interstate commerce with nation−wide uniformity in lien filings. The rules address general provisions, acceptance and refusal of documents, the information management system, filing and data entry procedures, search requests and reports, and other notices of liens under the UCC.

Publication Date: **October 24, 2001**
Effective Date: **October 24, 2001**
Expiration Date: **March 23, 2002**
Hearing Date: **December 3, 2001**

Health & Family Services (2)

(Community Services, Chs. HFS 30−)

1. A rule was adopted amending **s. HFS 94.20 (3)**, relating to patients' rights.

Finding of emergency

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

The Department operates secure mental facilities for the treatment of ch. 980, Stats., sexually violent patients. Departmental investigations have indicated that a portion of the ch. 980 inpatient population has routinely abused their s. HFS 94.20 telephone rights by making inappropriate calls to members of the public, by fraudulently placing numerous long distance calls that are billed to innocent third−parties or by operating fraudulent schemes. Since the Department has previously had no means of monitoring patient telephone use, the extent of this activity is unknown, but given the experience of investigations triggered by citizen complaints, it is clear that these sorts of activities are not infrequent among this population. In addition, experience with telephone monitoring in other secure institutions indicates that call monitoring can and does help staff detect contraband and other security−related issues and activities. These abuses are clearly contrary to the therapeutic activities conducted at the secure mental health facilities.

Until recently, the Department has been unable to stop these abuses because the Department's facilities lacked secure telephone systems. Previous DHFS efforts to obtain secure telephone systems from the telephone system's vendor used by the Department of Corrections were not successful because the call volume at DHFS's secure mental health facilities were viewed as insufficient to support the telephone system.

In late 2000, the Department of Corrections selected a new vendor for its secure telephone system. In May 2001, the new vendor agreed to also install the system in DHFS's secure mental health facilities. The installation of the system at the facilities will be completed by June 20, 2001. The systems will allow the Department to establish and enforce calling lists for each inpatient and monitor inpatients' calls for counter−therapeutic activity. An inpatient's calling lists is a finite number of telephone numbers associated with persons the inpatient is approved to contact by telephone. Use of calling lists alone, however, is insufficient to discourage and minimize inpatient attempts to subvert the system. The Department must monitor phone calls made by ch. 980 inpatients to discourage and minimize the occurrence of inpatients calling persons on their calling list who, in turn, subvert the secure system by forwarding the inpatient's call for the prohibited purposes and activities previously described. The Department must be able to monitor the phone calls of ch. 980 inpatients both to protect the public and promote therapeutic activities at the secure mental health facilities.

The Department is issuing these rules on an emergency basis to protect the public's safety by minimizing the recurring fraudulent activity associated with telephone use. These rules also ensure the public's safety and welfare by promoting the effective treatment mission of the secure mental health facilities. The recording capability of the telephone system hardware that has been installed at the Wisconsin Resource Center and the Sand Ridge Secure Treatment Center cannot be turned off, i.e., when the system is functional, all features of the system are fully operational. If the secure telephone system is not operational, both the Wisconsin Resource Center and the Sand Ridge facility will lose the therapeutic and safety advantages afforded by the system. Since the Sand Ridge facility is accepting its first patients during the week of June 18th, there is not alternative telephone system for patients.

Publication Date: **June 22, 2001**
Effective Date: **June 22, 2001**
Expiration Date: **November 19, 2001**
Hearing Date: **September 12, 2001**
Extension Through: **January 17, 2002**

2. Rules adopted revising **ch. HFS 90**, relating to early intervention services for children birth to 3 with developmental needs.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the health and welfare of children receiving early intervention services under the Wisconsin "Birth to 3 Program." The facts constituting the emergency are as follows:

Counties must, under s. 51.44 (3) and (4), Stats., and s. HFS 90.06 (2), provide or contract for the provision of early intervention services for children with developmental needs in the age group from birth to 3. Qualifying children in each

county are entitled to receive needed services. While counties may assess parents of children receiving early intervention services a share of those service costs, counties ultimately are responsible for the costs of providing such services. Since counties' cost exposure for Birth to 3 program costs is unlimited, unanticipated increases in a county's costs may result in a county suspending program services due to a lack of funding. Even though such cessations are illegal, one county indeed suspended the provision of needed services within the past year. By the time the Department was able to reinitiate services in the county, enrolled children were deprived of needed services for several months. Given the negative effect such service cessations could have on children with disabilities, the Department needs to immediately alleviate the cost burden on counties by increasing the share of service costs parents must bear. In doing so, the Department will preserve the continuity of early intervention services.

The Department is also proceeding with the promulgation of the body of rules contained in this order as proposed permanent rules that will remain in effect when this emergency order expires. The full basis for the changes made by these orders is explained below:

Section HFS 90.06 (2) (h) specifies that county administrative agencies must determine the amount of parental liability for the costs of the early intervention services in accordance with ch. HFS 1. Chapter HFS 1 contains the Department's cost liability determination and ability to pay standards and guidelines for services purchased or provided by the Department and counties. Section HFS 90.06 (2) (h) also states that parents may satisfy any liability not met by third party payers if parents pay the amount determined in accordance with the family support payment formula in s. HFS 65.05 (7).

The Department's ability to pay system currently ties the Birth to 3 program to s. HFS 65.05 (7) and ch. HFS 1. Chapter HFS 90's use of these other Department administrative rules has had several undesirable consequences. First, the methodology in s. HFS 65.05 (7), while appropriate for families with children having severe disabilities, is inappropriate for the Birth to 3 program because of the variability in applying the methodology and the significantly greater turnover of families in the Birth to 3 program. This turnover of families makes the chapter's complex calculations relatively onerous on counties to administer.

Sections HFS 90.06 (2) (h) and 90.11 (2) (a) 2. and 4. cross reference and incorporate ch. HFS 1. Section HFS 1.01 (4) (d) allows counties to request an exemption from applying the ability to pay system because the county can document that the imposition of a ch. HFS 1 family cost sharing charge is administratively unfeasible. Twenty−four counties have demonstrated to the Department that their cost of administering the ability to pay system amounts to more than the revenues the counties collect. The relatively high cost of administering the program under the current provisions of ch. HFS 90 combined with relatively low rates of cost−sharing by families permitted by counties' application of s. HFS 65.05 (7), has made the program burdensome on some counties.

Second, federal policies governing Birth to 3 programs require participating states to administer a statewide early intervention system and do not allow a county to bill a family's insurance without the family's consent. Chapter HFS 1, however, requires that a family's insurance benefits be billed; a contradiction of federal law. Third, the current ability of counties to request and obtain exemption from participating in the ability to pay system also is contrary to federal policies requiring states to operate a uniform statewide early intervention system. While federal regulations are currently being revised, none of the regulations circulated by the U.S. Department of Education would have any bearing on the Department of Health and Family Service's promulgation of these administrative rules.

The Department's modifications to ch. HFS 90 have two results. First, since ch. HFS 90 no longer cross−references ch. HFS 1, counties could no longer request exemption from participating in Wisconsin's Birth to 3 program cost share. County participation in administering the Birth to 3 program cost share becomes mandatory. Second, the method of determining parents' share of the costs of needed services is simplified and standardized statewide and is based on the relationship of families' incomes to the federal poverty threshold.

The rules simplify the determination of parental cost share, thereby eliminating the current ability to pay system's inequities for families statewide and reducing counties' administrative costs associated with the program. The Department's use of the federal poverty threshold, as revised annually, is a benchmark against which families' adjusted incomes are compared to determine the parental cost share liabilities. Under this system, the Department projects that the number of families required to share in the early intervention service costs will roughly double. Since each family's cost share will be based on approximately 1% of their income (as adjusted by a standard deduction for each child with a disability in the family) rather than the previous basis of 3% of income minus a standard deduction and disability−related expenses, the cost share of some families may increase. Families with incomes above 200% of the federal poverty level will be billed for part of the early intervention services their children receive. Families with adjusted incomes below 200% of the federal poverty threshold will be exempt from cost sharing. The Department projects that about 2,000 families will be exempt from cost sharing under the proposed formula and about 3,100 families will have a liability for a cost share.

Under the simplified payment system the Department is setting forth, the Department expects counties' costs to administer the payment system to decline as the number of forms and required calculations should be significantly reduced. The Department projects that the rule changes will increase the revenues generated by counties, in total, due to the fact that more families will have a parental cost share and more counties will be participating in the parental cost share system. However, individual counties having relatively lower per capita incomes may not experience significant revenue increases.

Publication Date:	**September 26, 2001**
Effective Date:	**October 1, 2001**
Expiration Date:	**February 28, 2002**

Health & Family Services

(Health, Chs. HFS 110—)

Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk−Sharing Plan (HIRSP).

Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of

emergency. These are the emergency rules. Department staff consulted with the Health Insurance Risk−Sharing Plan (HIRSP) Board of Governors on April 25, 2001 on the rules, as required by s. 149.20, Stats.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk−Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty−six percent of the 10,790 HIRSP policies in effect in March 2001, were of the Plan 1 type. Plan 1 has Option A ($1,000 deductible) or Option B ($2,500 deductible). The rate increases for Plan 1 contained in this rulemaking order increase an average of 3.4%. Rate increases for specific policyholders range from 0.0% to 4.9%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. This increase reflects industry−wide premium increases and takes into account the increase in costs associated with Plan 1 claims. According to state law, HIRSP premiums must fund 60% of plan costs and cannot be less than 150% of the amount an individual would be charged for a comparable policy in the private market.

A second type of medical coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a $500 deductible. Fourteen percent of the 10,790 HIRSP policies in effect in March 2001, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 3.4%. Rate increases for specific policyholders range from 0.0% to 4.9%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. These rate increases reflect industry−wide cost increases.

The Department through this rulemaking order proposes to amend ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 2000. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2001. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is $19,982,024. The total annual contribution to the HIRSP budget provided by an assessment on insurers is $19,617,772. On April 25, 2001, the HIRSP Board of Governors approved the calendar year 2000 reconciliation process and the HIRSP budget for the plan year July 1, 2001 through June 30, 2002.

The fiscal changes contained in this order also reflect the conversion of HIRSP from cash accounting to accrual accounting, as recommended by the Legislative Audit Bureau and the HIRSP Board of Governors. Cash accounting recognizes the costs of claims and expenses when paid. Accrual accounting recognizes the costs of claims and expenses in the time period when first incurred. Basically, HIRSP program liabilities have been understated under the cash accounting methodology. The net effect of the HIRSP conversion to accrual accounting is to provide a more accurate reflection of the program's financial condition.

Publication Date:	**June 29, 2001**
Effective Date:	**July 1, 2001**
Expiration Date:	**November 28, 2001**
Hearing Date:	**July 31, 2001**
Extension Through:	**January 26, 2002**

Insurance

Rules adopted revising **chs. Ins 6, 26 and 28**, relating to Wisconsin agent licensing rules to be reciprocal and more uniform under Gramm Leach Bliley Act and the NAIC Producer model.

Finding of emergency

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

This rule accomplishes changes required for new agent licensing software and other changes required for Gramm Leach Bliley Act and conformance to the NAIC model licensing law. This rule has already been sent to the legislature for review and the review period is completed. The only modification pending is related to the exemption for Rental Car insurance. The germane amendment has been sent to the appropriate committees and should be acceptable. The remainder of the rule is exactly as sent to the legislature and will be promulgated and published. The publication of the rule will not be effective until February of 2002 at the earliest and many of these provisions need to be effective immediately.

OCI has entered into a contract with a vendor for its agent's licensing software. This software is used by about 15 states. The software requires that certain modifications be made to existing rules in order for it to work. OCI has converted to the new system and requires the changes immediately.

In addition, in order for OCI to be considered reciprocal certain changes relating to the licensing of nonresidents need to be made.

Publication Date:	**November 9, 2001**
Effective Dates:	**November 9, 2001 and January 1, 2002**
Expiration Dates:	**April 8 and May 31, 2002**

Natural Resources − (2)

(Fish, Game, etc., Chs. NR 1−)

1. Rules adopted amending **s. NR 20.20 (73) (j) 1. and 2.**, relating to sport fishing for yellow perch in Green Bay and

its tributaries and **s. NR 25.06 (2) (b) 1.**, relating to commercial fishing for yellow perch in Green Bay.

Finding of emergency

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

Yellow perch contribute significantly to the welfare of Wisconsin citizens by supporting popular and economically valuable sport and commercial fisheries. The yellow perch population in Green Bay is rapidly declining. This decline reflects a number of years of very poor reproduction. The only recent year with reasonably good natural reproduction was 1998. The fish spawned that year contributed to the sport harvest in 2001 and will become vulnerable to commercial gear this summer. Sport and commercial harvests of adult yellow perch must be limited immediately in order to protect those fish and maximize the probability of good reproduction in the near future.

Publication Date:	**June 30, 2001**
Effective Date:	**July 1, 2001**
Expiration Date:	**November 28, 2001**
Hearing Date:	**August 13, 2001**
Extension Through:	**January 26, 2002**

2. Rules adopted revising **ch. NR 10**, pertaining to deer hunting in various deer management units.

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. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial deer damage to agricultural lands and forest resources, and to minimize deer nuisance problems, thereby protecting the public peace, health, safety and welfare. Normal rule−making procedures will not allow the establishment of these changes by September 1. Failure to modify the rules will result in excessively high deer populations well above established goal levels, causing substantial deer damage to agricultural lands and forest resources, and potential for disease.

Publication Date:	**May 16, 2001**
Effective Date:	**September 1, 2001**
Expiration Date:	**January 29, 2002**
Hearing Date:	**June 11, 2001**

Volunteer Fire Fighter and Emergency Medical Technician Service Award Board

Rules adopted creating ch. VFF−EMT 1, relating to the length of service award program.

Exemption from finding of emergency

(Section 10 (3) (a), 1999 Wis. Act 105.)

Analysis prepared by the Department of Administration:

Statutory authority: ss. 16.004 (1) and 16.25 (2), (3), (4) and (5), Stats.

Statutes interpreted: s. 16.25 *et seq.*, Stats.

Pursuant to section 16.25 (2) through (5), Stats., the Volunteer Fire Fighter and Emergency Medical Technician Service Award Board ("Board") is required to establish by rule a program ("Length of Service Awards Program" or "Program") to provide length of service awards, as described in 26 USC 457 (e) (11), to volunteer firefighters ("VFF") and municipalities that operate volunteer fire departments or contract with volunteer fire companies, and to volunteer emergency medical technicians ("EMT"). To the extent permitted by federal law, the Program is to be designed to treat length of service awards as a tax−deferred benefit under the Internal Revenue Code. The rules are to include design features for the Program, the requirements for and the qualifications of private sector entities that are eligible to provide administrative services and investment plans under the Program, and an appeal. Significant features of the rule are addressed below:

Section VFF−EMT 1.04 describes eligibility requirements for municipalities wishing to participate in the program, such as adopting a resolution or ordinance authorizing participation, developing standards for determining the service required of the individuals it sponsors in order to qualify for municipal contributions and providing for circumstances where municipalities wish to jointly operate, or contract with, the same volunteer fire department or volunteer fire company.

Section VFF−EMT 1.05 sets forth requirements and procedures for municipal contributions made on behalf of eligible volunteers, and for the state's matching contribution (up to $250 per eligible individual annually).

Section VFF−EMT 1.06 sets forth the parameters for municipal contributions for prior service rendered before the municipality began participating in the Program. The minimum contribution for prior service is set at $100, and those contributions may spread over a number of years. A separate accounting is required for these prior service payments.

Section VFF−EMT 1.07 sets forth the Program's vesting requirements and the various permutations possible between full and partial vesting periods and the minimum age requirement (age 60) for payout. Section VFF−EMT 1.07 (1) establishes that 20 years service is required to fully vest and, upon reaching age 60, the award must be paid. (This requirement insures that the benefit maintains its tax deferred status.) Section VFF−EMT 1.07 (2) provides that a fully vested individual age 60 or older may continue to provide service toward a new length of service award under a new account but, for IRS rule purposes, contributions must be paid immediately and cannot accumulate. Section VFF−EMT 1.07 (3) provides for partial vesting after 10 years' service. Should the individual perform more than 10 but less than 20 years' service, upon reaching age 60, he or she will receive only 50% of the net asset value of the benefit account for the first 10 years of service rendered, and an additional 5% for each year thereafter, up to 19 years. Section VFF−EMT 1.07 (7) allows an individual to provide simultaneous service to two or more separate municipalities but, in such cases, only one year of service credit may be earned.

Section VFF−EMT 1.09 details the notice and procedure for when a VFF−EMT ceases performing service for one participating municipality and begins performing service for another municipality, which utilizes a different program administrator or vendor. Such a transfer is allowed, but the account will be frozen and a new one started with the new program administrator. However, any accumulated years of credited service will continue to count toward the vesting requirements. Section VFF−EMT 1.10 allows for benefits to be received both upon disability, or to the beneficiaries upon death of the VFF−EMT.

Section VFF−EMT 1.12 sets forth minimum program administrator qualifications. These include five years of experience providing a length of service award program, adequate marketing and enrollment services capabilities, various accounting and record keeping procedures and abilities, membership in good standing in various organizations customary in the program administrator's or investment manager's industry that provides protection against loss, and overall financial strength.

Section VFF−EMT 1.13 provides for the administration of plans offered by a program administrator under a contract with the Board, and standard provisions to be included. These include compliance with all pertinent state and federal statutes, rules and regulations, mandatory full disclosure to the Board of all fees and commissions earned directly and indirectly on the operations of the program, audits, and data processing system failure and administrative service interruption contingency plans. Also important are the required annual statements to participating municipalities and the individuals they sponsor, detailing all contributions made and the fees commissions, and charges paid that affect the individual's account.

Section VFF−EMT 1.17 provides for a two−step appeals process in which a VFF−EMT may first protest service credit issues to the participating municipality, which may consult with the program administrator. Any decision of the municipality may be reviewed at the Board's discretion. An individual who has a substantial interest affected by a Board decision may appeal directly in writing to the Board. All Board decisions are final.

Publication Date:	**September 21, 2001**
Effective Date:	**September 21, 2001**
Expiration Date:	**February 18, 2001**
Hearing Date:	**December 27, 2001**
	[See notice this Register]

Scope statements

Financial Institutions−Banking

Subject

Section DFI−Bkg 80.90 − Relating to registration fees under the Wisconsin Consumer Act.

Policy analysis

Objective of the rule. To create s. DFI−Bkg 80.90. 2001 Act 16 amended ss. 426.201 (2) (intro), (2) (fm), (3), and 426.202 (1m) (b) and (1m) (c); created s. 426.201 (2m); repealed s. 426.202 (1m) (a) 1. a., (1m) (a) 1. b., and (1m) (a) 1. c., (d) and (e); and renumbered and amended s. 426.202 (1m) (a) 1. (intro.). The act authorizes the Department of Financial Institutions to adopt rules pertaining to registration fees under the Wisconsin Consumer Act. The proposed rule revises the formula for calculating these fees.

Statutory authority

Sections 426.201 (3), 227.24 (1) and 227.11 (2), Stats.

Staff time required

40 hours.

Health and Family Services

Subject

Policies regarding the circumstances under which the superintendent of a facility housing a sexually violent person placed at the facility under s. 980.065, Stats., may allow that person to leave the grounds of the facility under escort.

Policy analysis

2001 Wisconsin Act 16 (the biennial budget bill) created a new section of ch. 980, Stats., to address circumstances under which a person committed to either the Wisconsin Resource Center or the Sand Ridge Secure Treatment Center could be allowed to temporarily leave the facility for selected reasons, such as death−bed visits and funerals. The law directs the Department of Health and Family Services to promulgate rules for the administration of this new section. The rules the Department would develop would establish the policies and procedures under which the superintendent of a facility could allow a patient detained or committed under ch. 980, Stats., to leave the grounds of the facility under escort.

Statutory authority

Section 980.067, Stats., as created by 2001 Wisconsin Act 16.

Staff time required

30 hours to develop rules for department−level review.

Health and Family Services

Subject

The proposed rule's purpose is to mitigate the large drug costs the Wisconsin Chronic Disease Program (WCDP) is experiencing, by increasing benefit recipients' copayment amount. The Department administers the WCDP, which is the payer of last resort for the adult working poor with health problems relating to Chronic Renal Disease, Hemophilia or Adult Cystic Fibrosis. Administrative rules governing the reimbursement of beneficiary costs of each of these three illnesses are contained in chs. HFS 152, 153 and 154, respectively.

Policy analysis

The WCDP reimburses beneficiaries' dialysis and transplant services, home supplies, lab and x−ray services and kidney donor services for chronic renal disease recipients. Adult cystic fibrosis recipients are eligible for reimbursement of hospital services, certain physician services, lab and x−ray services, prescription medication and some home supplies. Recipients with hemophilia receive reimbursement for blood derivatives and supplies necessary for home infusion. About 90% of the program's budget funds the care of chronic renal disease recipients. About $2.7 million of that 90% of the WCDP budget ($4.5 million) is for medications. Medication costs are increasing about 10% annually. The Department did not receive an inflationary adjustment to accommodate the rising medication costs and other factors in the 2001−03 biennial budget. Consequently, the WCDP will likely have an estimated shortfall of about $900,000 (GPR) for the 2001−03 biennium. An expanded drug rebate program, additional generic drugs, and additional price ceilings can fund a majority, but not all of the $900,000 needed savings. Therefore, the Department will also need to increase WCDP patients' drug copayments. The Department's Office of Legal Counsel has determined that existing ss. HFS 152.065 (6), 153.07 (4) and 154.07 (4) limit WCDP to the existing $1 Medicaid drug copayment levels. An alternative to increasing WCDP drug copayments would be to limit WCDP enrollment or drug coverage. However, section 49.68 of the statutes states that "it is declared to be the policy of this state to assure that all persons are protected from the destructive cost of kidney disease treatment by one means or another." Therefore, the Department deems increasing the drug copayment amount for all three chronic disease programs to be the most prudent option. The copayment amount will be based on the recommendation of the WCDP Advisory Committee and other factors.

Statutory authority

The WCDP is governed by sections 49.68, 49.683 and 49.685 of the Wisconsin Statutes and chapters HFS 152, 153 and 154 of the Wisconsin Administrative Code.

Staff time required

Approximately 30 hours to prepare a draft rulemaking order.

Insurance

Subject

Section Ins 8.49, Wis. Adm. Code, relating to timely processing of applications for small employer health insurance.

Policy analysis

Objective of the rule. To comply with the Governor's Task Force Report on Small Employer Health Insurance recommendation to develop a voluntary uniform application for small employers and require insurers to process applications and make offers to small employers applying for health insurance coverage with a specified time period.

Current rules require that coverage be extended in a timely fashion but do not cover the actual rate quote which may be delayed, this interferes with the ability of the small employer to obtain and compare rates in order to choose the most competitive rate, this new rule will reflect the policy recommendation of the Governor's Task Force Report that the use of a uniform application and rules requiring processing of applications and offers within a specified time period will reform the application process so as to ease the burden of small employers.

Statutory authority

Ch. 635, ss. 628.34 and 601.41, Stats.

Staff time required

40 hours.

Natural Resources

Subject

Laboratory Certification Program fee adjustments.

Policy analysis

NR 149.05 (1) (b), Wis. Adm. Code, requires annual Laboratory Certification program fee adjustments be approved by the Natural Resources Board. Timing is critical to the fee approval process. Laboratories are billed each year in May, with payment due in full by the certification period's August 31 end−date. If the proposed budget and fees are not approved at the March Natural Resources Board meeting, it will be difficult for the program to mail bills in time to collect the revenue necessary to operate the program during the coming fiscal year. In accordance with s. NR 149.05 (1) (b), the fee adjustment proposal will be reviewed by the Laboratory Certification Standards Review Council prior to the March Natural Resources Board meeting. The Council's comments regarding the program's fee adjustment proposal will be summarized and addressed for presentation to the Natural Resources Board.

Statutory authority

Section 299.11 (5), Stats.

Staff time required

Approximately 115 hours of Department time will be needed.

Natural Resources

Subject

Snowmobile railroad crossings.

Policy analysis

Major changes to the enabling legislation that created the Department's role in regulating snowmobile railroad crossings that are not located on public roads occurred in the spring session of the 2001 Legislature. 2001 Wisconsin Act 14 was signed into law on August 17, 2001. This legislation resolves a lawsuit against the Department and the Governor filed in 1999 by the Soo Line Railroad. The resulting legislative changes were the product of negotiations between the Association of Snowmobile Clubs, the Department, the Attorney General's Office, the Office of the Commission of Rails and railroad company representatives. The major changes in the legislative modification that impact the way the Department will administer the snowmobile rail crossing law include removal of snowmobile clubs from the responsibility of the construction activity within 4 feet of each rail. This construction will now be done by the railroad authority. This will result in the removal of construction standards from the rules. The railroad will also be able to recoup a fee for the use of their property for the crossing. The permit application and review procedure for new crossings is also modified so that the railroad interests have more standing in the siting and approval of a new crossing.

Statutory authority

Sections 350.137, 350.138, 350.139 and 350.1395, Stats.

Staff time required

Approximately 130 hours will be needed by the Department.

Natural Resources

Subject

City of Oconomowoc Police Department boat patrol designated as the water safety patrol for Lac LaBelle.

Policy analysis

The City of Oconomowoc has a long history of operating a municipal water safety patrol on Lac LaBelle. Lac LaBelle is located within the jurisdictions of the City of Oconomowoc, Town of Oconomowoc and Village of Lac LaBelle. In the past, the three municipalities split the cost of operating the patrol. During the summer of 2001, the Village of Lac LaBelle initiated its own water safety patrol which operated on the portion of Lac LaBelle that was contiguous to the Village. The City of Oconomowoc has petitioned the Department to designate its water safety patrol as the only patrol that has jurisdiction on Lac LaBelle.

Statutory authority

Section 30.79 (4), Stats.

Staff time required

Approximately 3 hours will be needed by the Department.

Natural Resources

Subject

Aquatic Plant Management and Protection.

Policy analysis

2001 Wis. Act 16 included new legislative language for the protection of native aquatic plant communities and control of invasive aquatic plant species. The department is directed, under s. 23.24, Stats., to establish a program to protect and develop diverse and stable communities of native aquatic plants, to regulate how aquatic plants are managed, and to provide education and conduct research concerning invasive aquatic plants in waters of this state. The department is directed to designate by rule which aquatic plants are invasive species and to administer and establish by rule procedures and requirements for issuance of aquatic plant management permits.

The Department intends to work with lake, river and wetland interest as well as the regulated community and providers of aquatic plant management services and equipment to revise ch. NR 107. Under the new law, traditional aquatic plant control activities that previously have been unregulated now require a permit from the Department. To allow beneficial aquatic plant control activities to continue through the 2002 growing and high water season (May through September), an emergency rule is proposed.

Statutory authority

Section 23.24, Stats.

Staff time required

Approximately 50 hours will be needed by the Department.

Natural Resources

Subject

Technical corrections to the hazardous waste rules (NR 600 series) and used oil standards (NR 590) and updating the rules to comply with federal requirements.

Policy analysis

The Department is proposing the make the technical corrections and revisions necessary to comply with federal requirements for program authorization.

Statutory authority

Sections 227.11 (2) (a), 291.05, 291.07 and 291.11, Stats.

Staff time required

Over 1,000 hours will be needed by the Department.

Natural Resources

Subject

Updating the Wisconsin−Specific (Universal) waste rules (ch. NR 690).

Policy analysis

The Department is proposing the make the technical corrections and revisions necessary to comply with federal requirements for program authorization.

Statutory authority

Sections 227.11 (2) (a), 291.07 and 291.11, Stats.

Staff time required

Approximately 325 hours will be needed by the Department.

Natural Resources

Subject

Exemptions for and delineation of nonfederal wetlands and permit decision time limits.

Policy analysis

Wisconsin Act 6 requires the department to submit rules within 13 months to incorporate "existing federal law or interpretation" for exempting certain activities in nonfederal wetlands from needing a water quality certification. Wisconsin Act 6 also requires that the department use the procedures contained in the 1987 U.S. Army Corps of Engineers wetland delineation manual for nonfederal wetlands.

Also because Wisconsin Act 6 and 1999 Wisconsin Act 147 and chs. NR 299 and 300 contain time limits for making wetland water quality certification decisions, it is proposed that ch. NR 300 include all water quality certification time limits required by law.

Statutory authority

Sections 281.36 and 227.21 (2), Stats.

Staff time required

The Department will need approximately 350 hours.

Regulation and Licensing

Subject

Disclosure of agency by real estate licensees and relating to several other provisions in ch. RL 24.

Objective of the Rule. Amend rules in order to clarify issues relating to the time when a real estate licensee must disclose to the parties in a real estate transaction the nature of the agency relationship the licensee has with a party.

Policy analysis

Section RL 24.07 (8) contains general requirements for disclosing agency and it describes requirements pertaining to listing contracts, offers to purchase and option contracts, subagency contracts, and listings for lease and property management contracts. Section RL 24.13 (3) (b) permits a broker to arrange for a guaranteed sale at the time of listing.

Section RL 24.07 (8) would be amended to more clearly describe circumstances when the disclosure of agency should be made, such as open houses, meetings with clients and customers and other showings of property. Section RL 24.13 (3) (b) would be amended by removing the following five words at the end of the last sentence: "...at the time of listing."

Statutory authority

Sections 227.11 (2), 452.03, 452.04, 452.05, 452.07, 452.10, 452.13 and 452.14, Wis. Stats.

Staff time required

80 hours.

Transportation

Subject

Objective of the rule. This rule making will amend chs. Trans 325 and 326, relating to motor carrier safety and hazardous material transportation safety, to bring them into conformance with changes to the Federal Motor Carrier Safety Regulations and Hazardous Material regulations which will go into effect on June 1, 2002. Amendment of these rules will assure State Patrol inspectors and troopers are enforcing the most recent Safety regulations for Interstate Carriers and Hazardous Material (HM) regulations for both interstate and intrastate HM carriers.

1. Trans 325 (Motor Carrier Safety Regulations) − interstate. Amend the rule to include all changes in effect as of June 1, 2002. Changes have been made to the Federal Motor Carrier Safety regulations Title 49, Parts 390 through 397, regulating interstate operations. Amendment to this rule will bring state regulations in compliance with current interstate regulations.

2. Trans 326 (Motor Carrier Safety Requirements for Transportation of Hazardous Materials) for interstate and intrastate operations. Amend the rule to include all changes which have been made to Federal Motor Carrier Safety regulations 49 CFR Parts 107, 171, 172, 173, 177, 178, and 180 and are in effect as of June 1, 2002. Amendment to this rule will bring state regulations, interstate and intrastate regulations into compliance with current federal regulations.

Policy analysis

Trans 325 − The Department annually updates 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 Standard Out−of−Service criteria for placing vehicles and drivers out of service.

Trans 326 − The Department annually updates 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 to enforce the most current hazardous material (HM) regulations already in effect for interstate and intrastate carriers. The rule will continue to

reference the use of the most recent North American Standard Out−of−Service criteria vehicles and drivers out of service.

Statutory authority

Trans 325 – ss. 110.075 and ch. 194, Stats.

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

Staff time required

It is estimated that state employees will spend 100 hours on the rule making process, including research, committee meetings, drafting and conducting public hearings.

Transportation

Subject

Objective of the rule. This rule making will amend ch. Trans 327, relating to intrastate motor carrier safety regulations to bring them into conformity with the most recent changes to the Federal Motor Carrier Safety Regulations which will go into effect on June 1, 2002.

Amendment of this rule will assure State Patrol inspectors and troopers are enforcing the most recent Federal Motor Carrier Safety regulations for intrastate carriers.

The update of this rule will keep the Department in compliance to qualify for continued Motor Carrier Safety Assistance Program (MCSAP) funding.

Policy analysis

The Department annually updates ch. Trans 327 to keep current with the most recent changes to the Federal Motor Carrier Safety Regulations, 49 CFR parts 390 to 397, in effect as of June 1, 2002. This rule making will also bring Wisconsin in compliance with the regulations found in 49 CFR Part 395.

The rule will continue to reference the use of the most recent North American Standard Out−of−Service criteria for placing vehicles and drivers out−of−service.

Statutory authority

Sections 110.07, 110.075, 194.38 and 194.43, Stats.

Staff time required

It is estimated that state employees will spend 100 hours on the rule making process, including research, committee meetings, drafting and conducting public hearings.

Submittal of rules to legislative council clearinghouse

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

Commerce

Rule Submittal Date

On November 26, 2001, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 101.02 and 101.025, Stats.

The proposed rule−making order affects ch. Comm 64, relating to heating, ventilating and air conditioning.

Agency Procedure for Promulgation

A public hearing is scheduled for January 16, 2002.

Contact Person

Jean M. MacCubbin, (608) 266−0955

Commerce

Rule Submittal Date

On November 28, 2001, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 101.02, 101.055, 101.09, 101.12, 101.14, 101.17, 101.175, 191.19, 191.82, 101.973, 145.02, 145.26, Stats.

The proposed rule−making order affects chs. Comm 2, 3, 5, 7, 9, 10, 14, 16, 30, 32, 34, 41, 45, 61 to 65, 71, 75, 81, 82, 84, 90 and 91, relating to construction of public buildings and places of employment.

Agency Procedure for Promulgation

A public hearing is scheduled for January 4, 2002.

Contact Person

Sam Rockweiler, (608) 266−0797

Commerce

Rule Submittal Date

On November 29, 2001, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 16.358, 560.04 and 560.045, Stats.

The proposed rule−making order affects ch. Comm 108, relating to community development block grant program.

Agency Procedure for Promulgation

A public hearing is scheduled for January 16, 2002.

Contact Person

Jean M. MacCubbin, (608) 266−0955

Commerce

Rule Submittal Date

On December 4, 2001, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 560.13 (6), Stats.

The proposed rule−making order affects ch. Comm 110, relating to brownfields redevelopment grants.

Agency Procedure for Promulgation

A public hearing is required.

Contact Person

Sam Rockweiler, (608) 266−0797

Employment Relations

Rule Submittal Date

On December 3, 2001, the Department of Employment Relations submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule changes update various provisions covering career executive employees updating pay range references for consistent with the compensation plan approved by the Joint Committee on Employment Relations (JCOER). The changes eliminate references to compensation provisions that no longer apply and amend rules to make career executive temporary assignments regulations consistent with those for interchange of non career executive employees.

Agency Procedure for Promulgation

A public hearing is required. It is not yet scheduled.

Contact Person

Elizabeth Reinwald, Legislative Liaison, at (608) 266−5316, (608) 267−1020 (Fax) or by e−mail at Elizabeth.Reinwald@der.state.wi.us

Employment Relations − Division of Merit Recruitment and Selection

Rule Submittal Date

On December 3, 2001, the Division of Merit Recruitment and Selection in the Department of Employment Relations submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to various changes or clarifications in certification for employment consideration, probationary periods, and transfers of career executive employees and various technical changes to bring the rules into consistency with the statutes and compensation plan.

Agency Procedure for Promulgation

A public hearing is required. It is not yet scheduled.

Contact Person

Elizabeth Reinwald, Legislative Liaison, at (608) 266−5316, (608) 267−1020 (Fax) or by e−mail at Elizabeth.Reinwald@der.state.wi.us

Workforce Development

Rule Submittal Date

On November 30, 2001, the Department of Workforce Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 49.24 and 227.11 (2), Stats.

The proposed rule−making order affects ch. DWD 44, relating to child support incentive payments.

Agency Procedure for Promulgation

A public hearing is scheduled for January 7, 2002.

Contact Person

Elaine Pridgen, (608) 267−9403

Rule−making notices

Notice of Hearing
Commerce
(Building and Heating, etc., Chs. Comm 50 to 64)
[CR 01−139]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1) and (15), 101.055, 101.09 (3), 101.12 (3), 101.14 (1) and (4), 101.17, 101.175, 101.19, 101.82 (1), 101.973 (1), 145.02 (2), and 145.26, Stats., the Department of Commerce will hold a public hearing on proposed rules relating to construction of public buildings and places of employment.

The public hearing will be held as follows:

Date and Time:	Location:
January 4, 2002	Thompson Commerce Center
Friday	Third Floor, Room 3B
9:30 a.m.	201 West Washington Avenue
	Madison, Wisconsin

Analysis prepared by the Department of Commerce

Statutory Authority: ss. 101.02 (1) and (15), 101.055, 101.09 (3), 101.12 (3), 101.14 (1) and (4), 101.17, 101.175, 101.19, 101.82 (1), 101.973 (1), 145.02 (2), and 145.26, Stats.

Statutes Interpreted: ss. 101.02 (1) and (15), 101.055, 101.09 (3), 101.12 (3), 101.14 (1) and (4), 101.17, 101.175, 101.19, 101.82 (1), 101.973 (1), 145.02 (2), and 145.26, Stats.

Under the statutes cited, the Department protects public health, safety, and welfare by promulgating construction and fire safety requirements for public buildings and places of employment. Currently, these requirements are primarily contained in chapters Comm 50 to 64, 66, and 69. Through rules which were adopted by the Department on September 10, 2001, and which will become effective on July 1, 2002, those chapters are being replaced with chapters Comm 61 to 65.

Numerous other Commerce codes administered by the Department contain cross references to the construction and fire safety requirements in chapters Comm 50 to 64, 66, and 69. This rule package converts all of those cross references to chapters Comm 61 to 65, and is projected to have a simultaneous effective date of July 1, 2002.

This rule package also includes the following changes to chapters Comm 61 to 65, and several minor clarifications for chapters Comm 14 and 61 to 65:

1. Comm Table 61.30−3, which lists the fire protection systems that must receive plan approval from the Department or an authorized representative prior to installation, is expanded to include fire protection systems in (a) buildings exceeding 60 feet in height, (b) state−owned buildings except hospitals and nursing homes, and (c) mercantile buildings which combine retail areas with rack storage and which have floor areas exceeding 50,000 square feet.

2. Code text and informational notes in chapters Comm 62 to 65 that pertain to incorporation of several nationally recognized standards are modified to be consistent in each chapter.

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 January 16, 2002, 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 Sam Rockweiler, Department of Commerce, Bureau of Budget and Policy Development, P.O. Box 2689, Madison, WI 53701−2689.

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 (608) 266−8741 or (608) 264−8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Environmental Analysis

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

Initial Regulatory Flexibility Analysis

Department of Commerce

RULE NO.: Comm 2, 3, 5, 7, 9, 10, 14, 16, 30, 32, 34, 41, 45, 61 to 65, 71, 75, 81, 82, 84, 90, and 91, relating to:

Construction of Public Buildings and Places of Employment.

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

Builders and owners of commercial buildings and places of employment.

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

Some additional documentation may be needed to obtain approvals from the Department or authorized agents for the fire protection system plans that are addressed by the rules.

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

No additional skills.

Fiscal Estimate

The department is promulgating minor changes that primarily relate to administering the Commercial Building Code and numerous other Commerce codes that contain cross references to that code. These changes are expected to have no significant long−term impacts on costs or revenues at either state or local levels.

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

Notice of Hearing

Commerce
(Building & Heating etc., Chs. Comm 50−64)
[CR 01−135]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 and 101.025, Stats., the Department of Commerce will hold a public hearing on proposed rules relating to ch. Comm 64, Heating, Ventilating, and Air Conditioning.

The public hearing will be held as follows:

Date and Time:

Wednesday, January 16, 2002

1:00 p.m.

Location:

T.G. Thompson Commerce Center

201 West Washington Ave., Rm. 3B

Madison, WI

Interested persons are invited to appear at the hearings 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 **Friday, January 25, 2002,** to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing. Written comments should be submitted to:

Jean M. MacCubbin
Code Consultant
Department of Commerce
Div. of Administrative Services
P.O. Box 2689
Madison, WI 53701−2689

Analysis prepared by the Department of Commerce

Statutory authority: ss. 101.02 and 101.025, Stats.

Statutes interpreted: ss. 101.02 and 101.025, Stats.

Under s. 101.025, Stats., the department authority includes requirements for the intake of outside air for ventilation in public buildings or places of employment; the establishment of minimum quantities of outside air that must be supplied based upon the type of occupancy, the number of occupants, areas with toxic or unusual contaminants; and other pertinent criteria determined by the department. The department shall set these standards for mandatory intake of outside air and provisions where these standards may be waived.

The proposed revisions to ch. Comm 64, relating to heating, ventilating and air conditioning and the Wisconsin changes, additions or omission to the International Mechanical Code® (IMC), are primarily related to air−handling systems, particularly ventilation and filtration requirements, located in specific hospital and healthcare occupancies in conformance with specifications contained in the Guidelines for Design and Construction of Hospitals and Health Care Facilities published by the American Institute of Architects (AIA).

Section Comm 64.0309 is proposed to clarify that minimum temperatures are required to be maintained during occupancy. Section Comm 64.0401 recognizes that engineered systems are also an option when addressing the location of outdoor air intakes. One change to Table 64.0403 prohibits the use of natural ventilation for make up air in health care facilities. Section Comm 64.0604 is proposed to provide requirements in addition to IMC section 604 and 604.8 limiting the use of certain duct linings so as to mitigate fungal and microbial growth. Section Comm 64.0605 (1) clarifies the specific sections in the AIA Guidelines where filtration is stipulated. Section Comm 64.0900 is proposed to be created to clarify the use of final filters in duct humidifiers.

The proposed rule revisions were developed with the assistance of the HVAC Advisory Code Council. The Council consists of the following individuals: Timothy J. Gasperetti, representing the Building Owners and Managers Association of Milwaukee; Kevin Lichtfuss, representing the Wisconsin Association of Consulting Engineers; Michael Mamayek, representing the Plumbing and Mechanical Contractors of SE Wisconsin; Ken Pavlik, representing the Wisconsin Builders Association; Richard J. Pearson, representing the Wisconsin Chapter ASHRAE; Robert Pertzborn, representing the Wisconsin Association of Plumbing, Heating and Cooling Contractors, Inc.; David Stockland, representing the Associated Builders and Contractors of Wisconsin Ltd; Harry A. Sulzer, representing the League of Wisconsin Municipalities; and Robert D. Wiedenhoefer, representing the Sheet Metal and Air Conditioning Contractors Association of Wisconsin, Inc.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266−8741 or (608) 264−8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

Environmental Assessment

Notice is hereby given that the Department has prepared a preliminary Environmental Assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Jean M. MacCubbin
Code Consultant
Department of Commerce
Div. of Administrative Services
P.O. Box 2689
Madison, Wisconsin 53701
Telephone (608) 266−0955 or TTY (608) 264−8777

Written comments will be accepted until **Friday, January 25, 2002.**

Initial Regulatory Flexibility Analysis

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

All healthcare facilities currently are required to comply with the Guidelines for Design and Construction of Hospitals and Health Care Facilities published by the American Institute of Architects (AIA) for heating, ventilating and air conditioning as adopted in clearinghouse rule 00−179. This rule revision adds some additional minor requirements.

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

None known.

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

The rule revisions are specific to air−handling systems, particularly ventilation and filtration requirements, located in specific hospital and healthcare occupancies in conformance with specifications contained in the Guidelines for Design and Construction of Hospitals and Health Care Facilities published by the American Institute of Architects (AIA).

There are no known additional professional skills, above and beyond those now required in ch. Comm 64, required with these revisions.

Fiscal Estimate

The department currently administers a code on this topic. There are no new administrative activities required to implement this rule revision. There are no additional costs or revenues associated with implementing this rule revision.

Copies of Rule and Contact Person

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.state.wi.us/SB/SB−HomePage.

Paper copies may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701−2689, Email rward@commerce.state.wi.us, telephone (608) 266−8741 or (608) 264−8777 (TTY). Copies will also be available at the public hearings.

Notice of Hearing

Commerce
(Financial Resources for Businesses and Communities, Chs. Comm 105−128)
[CR 01−136]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.14 (4m) and 227.17, Stats., the Department of Commerce will hold public hearings on proposed rules relating to Community Development Block Grant Program.

The public hearing will be held as follows:

Date and Time:	**Location:**
Wednesday, January 16, 2002	T.G. Thompson Commerce Center (WHEDA Bldg.)
9:00 a.m.	3rd Floor, Conf. Rm. 3B 201 West Washington Ave. Madison, WI

Analysis prepared by the Department of Commerce

Statutory authority: ss. 16.358, 560.04 and 560.045

Statutes interpreted: s. 560.045, Stats.

Under s. 560.045, Stats., the Department of Commerce has the responsibility of accepting and evaluating applications, and awarding grants. One mechanism of the Department in fulfilling this responsibility has been the promulgation of rules for the state community development block grant program, ch. Comm 108.

This rule revision relates to changes in definitions which occurred in the 1999 Wis. Act 9; additional program funds now available from U.S. Housing and Urban Development (HUD); revising the application schedule on a continuing basis; and updating the process of scoring applications.

Currently public facility grants to eligible communities are awarded annually. Under this proposal, grants can be awarded throughout the year making it easier for communities to prepare and submit their proposals.

A number of definitions have been updated to reflect changes in Statutory citations, to include the complete definition as a Note for the user, and to clarify terms that may have been used inter−changeably in the previous edition of the code.

The rule revisions reflect the expansion of funding programs for public facilities planning to issue grants to eligible local governments for public facilities planning up to $12,500 per plan.

Some sections relating to the scoring of applications are being amended to reflect the intent of both the issue as well as staff experience with ranking applications.

Other minor revisions throughout the chapter relate to code clarification, Statutory notes, and rule format.

Interested persons are invited to appear at the hearings 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 **January 25, 2002**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

Written comments should be submitted to:

Jean M. MacCubbin, Department of Commerce

Administrative Services Division

P.O. Box 2689

Madison, WI 53701−2689

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266−8741 or (608) 264−8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

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.state.wi.us/SB/SB−HomePage.

Paper copies may be obtained without cost from Jean M. MacCubbin, Department of Commerce, Administrative Services Division, P.O. Box 2689, Madison, WI 53701−2689, Email: jmaccubbin@commerce.state.wi.us, telephone (608) 266−0955 or (608) 264−8777 (TTY). Copies will also be available at the public hearings and on the Commerce webpage at:
http://www.commerce.state.wi.us/COM/Com−Community.html.

Environmental Assessment

The proposed administrative code revision is categorized in ch. Comm 1, WEPA, Table 1.11−2 and determined to be a Type II action.

The proposed action is administrative in nature and has no potential direct effects on the quality of the human environment. Its direct effects on the human environment are positive in that it will provide more efficient environmental analysis and review of department actions in compliance with WEPA and NEPA policies and guidelines. The Department considers this action to have no potential for significant adverse impact.

The Department acknowledges that some projects funded in part by CDGB may require compliance with local, state or federal environmental review conducted by the applicant, which may be a unit of government, organization, business or individual. The Department acknowledges that it is not the sole decision maker in a project funded in part by CDGB.

The Department also acknowledges that some projects funded in part by CDBG may involve new development or rehabilitation and an application for rezoning and/or a conditional use permit at the local level. As specified in ch. Comm 1, these actions may be determined to be Type III

actions. All CDBG approvals by the department contain conditions that each project shall, when necessary, comply with all applicable local, state and federal requirements.

Initial Regulatory Flexibility Analysis

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

The proposed rule revisions are subject to eligible local governmental units only.

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

The reporting, bookkeeping and other procedures required for applicants or eligible local governmental units are expected to be more user−friendly, in that applications may be made throughout the year and that specific grant award requirements, scoring and award amounts are more clearly communicated in the rule and application materials.

The ability for an eligible local governmental unit to apply for CDGB funding throughout the year should serve as a valuable benefit for local government planning.

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

The rule revisions includes the ability to apply for various planning grants; no additional professional skills are expected to be required by applicants or eligible local governmental units.

Fiscal Estimate

The proposed rule revisions are specific to the processes and procedures in administration the federal funds, U.S. Housing and Urban Development (HUD). Eligible local units of government may be recipients of these funds.

Notice of Hearings

Public Instruction
[CR 01−130]

NOTICE IS HEREBY GIVEN That pursuant to ss. 118.045 (3) and 227.11 (2) (a), Stats., and interpreting s. 118.045, Stats., the Department of Public Instruction will hold public hearings as follows to consider the creation of ch. PI 27, relating to the commencement of a school term.

The hearings will be held as follows:

Date and Time	Location
December 13, 2001	**Tomahawk**
4:00 − 5:30 p.m.	CESA 9 304 Kaphaem Road
(informational)	Conference Rooms 1 and 2
December 20, 2001	**Milwaukee**
1:00 − 2:30 p.m.	MPS Administration Building 5225 W. Vliet Street
(informational)	Auditorium
January 3, 2002	**West Salem**
3:00 − 4:30 p.m.	CESA 4 923 E. Garland Street Heritage Room A and B
January 4, 2002	**Madison**
2:00 − 4:00 p.m.	GEF 3 Building 125 South Webster St. Room 041

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Lori Slauson, at (608) 267−9127 or leave a message with the Teletypewriter (TTY) at (608) 267−2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule is available on the internet at http://www.dpi.state.wi.us/dpi/dfm/pb/schstart.html. A copy of the proposed rule and the fiscal estimate may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

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

Written comments on the proposed rules received by Ms. Slauson at the above email or street address no later than January 9, 2002, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

2001 Wis. Act 16 requires school boards to start a school term after September 1 unless a school board submits a request to the Department of Public Instruction stating the reasons it would like the school term to start earlier. The department may grant a request only if it determines there are extraordinary reasons for granting it.

The department is required to promulgate rules to implement and administer this provision. The rules establish a procedure for school boards to use in requesting an earlier start date and gives examples of extraordinary reasons for granting such requests.

Fiscal Estimate

The proposed creation of Chapter PI 27, rules relating to the commencement of a school term, is a result of statutory changes made under 2001 Wisconsin Act 16. The rules will not have a fiscal effect separate from the statutory changes made under the Act. The Act modified s. 118.045, Stats., requiring school boards to start a school term after September 1 unless a school board submits a request to the department stating the reasons it would like the school term to start earlier. The department may grant a request only if it determines there are extraordinary reasons for granting it.

By law, school districts must provide 180 days of instruction. By starting school later, school districts will likely have to make up days by having shorter winter or spring breaks, or by extending the school year later into summer. If school is conducted during Thanksgiving or winter break when schools would normally be vacant, heating and electrical costs may increase. These costs are indeterminate.

Additionally, current law requires school districts to provide transportation for pupils in private schools. If private schools choose to begin the school year prior to September 1, transportation costs may increase if school districts are required to run additional bus lines or otherwise accommodate the transportation needs of private school pupils when public school is not in session. For example, one public school district has 40 percent of its elementary student population in private or parochial schools. The business manager of the public district estimated that if the private schools chose to start school prior to September 1, it would cost the school district an additional $5,000 to $6,000 per day in transportation costs. The private schools started on August 26 in 2001. If the new legislation would have been in effect

this year, it would have cost the public school district $25,000 to $30,000. It should be noted that excessive private school transportation costs are listed in the rule as an extraordinary reason to allow a school to begin a school term prior to September 1.

It is assumed this rule will have no state fiscal effect. These rules may affect small businesses. However, any costs or benefits will vary on a case−by−case basis depending on when such businesses need to employ pupils (at the beginning or end of summer).

Notice of Hearing

Volunteer Fire Fighter and Emergency Medical Technician Service Award Board
[CR 01−123]

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1) and 16.25 (2), (3), (4) and (5), Stats., and interpreting s. 16.25 et seq., Stats., the Department of Administration on behalf of the Volunteer Fire Fighter and Emergency Medical Technician Service Award Board, will hold a public hearing on both the Board's emergency rulemaking order and proposed permanent order creating Chapter VFF−EMT 1 of the Wisconsin Administrative Code, relating to the creation of a length of service award program for volunteer fire fighters and emergency medical technicians.

Hearing Date, Time and Location

Date:	**Thursday, December 27, 2001**
Time:	9:00 a.m.
Location:	Room 136 Administration Building 101 East Wilson Street, 1st Floor Madison, WI 53702

The hearing is being held in an accessible facility. Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, should be directed to: Donna Sorenson, Department of Administration, P.O. Box 7964, Madison, WI 53707−7864. Written comments must be received by January 7, 2002, to be included in the rule−making proceedings.

Proposed Order

The Volunteer Fire Fighter and Emergency Medical Technician Service Award Board propose an order to create Chapter VFF−EMT 1 of the Wisconsin Administrative Code.

Analysis prepared by the Department of Administration

Statutory authority: ss. 16.004 (1) and 16.25 (2), (3), (4) and (5), Stats.

Statutes interpreted: s. 16.25 *et seq.*, Stats.

Pursuant to section 16.25 (2) through (5), Stats., the Volunteer Fire Fighter and Emergency Medical Technician Service Award Board ("Board") is required to establish by rule a program ("Length of Service Awards Program" or "Program") to provide length of service awards, as described in 26 USC 457 (e)(11), to volunteer firefighters ("VFF") and municipalities that operate volunteer fire departments or contract with volunteer fire companies, and to volunteer emergency medical technicians ("EMT"). To the extent permitted by federal law, the Program is to be designed to treat length of service awards as a tax−deferred benefit under the Internal Revenue Code. The rules are to include design features for the Program, the requirements for and the qualifications of private sector entities that are eligible to provide administrative services and investment plans under the Program, and an appeal. Significant features of the rule are addressed below:

Section VFF−EMT 1.04 describes eligibility requirements for municipalities wishing to participate in the program, such as adopting a resolution or ordinance authorizing participation, developing standards for determining the service required of the individuals it sponsors in order to qualify for municipal contributions and providing for circumstances where municipalities wish to jointly operate, or contract with, the same volunteer fire department or volunteer fire company.

Section VFF−EMT 1.05 sets forth requirements and procedures for municipal contributions made on behalf of eligible volunteers, and for the state's matching contribution (up to $250 per eligible individual annually).

Section VFF−EMT 1.06 sets forth the parameters for municipal contributions for prior service rendered before the municipality began participating in the Program. The minimum contribution for prior service is set at $100, and those contributions may spread over a number of years. A separate accounting is required for these prior service payments.

Section VFF−EMT 1.07 sets forth the Program's vesting requirements and the various permutations possible between full and partial vesting periods and the minimum age requirement (age 60) for payout. Section VFF−EMT 1.07 (1) establishes that 20 years service is required to fully vest and, upon reaching age 60, the award must be paid. (This requirement insures that the benefit maintains its tax deferred status.) Section VFF−EMT 1.07 (2) provides that a fully vested individual age 60 or older may continue to provide service toward a new length of service award under a new account but, for IRS rule purposes, contributions must be paid immediately and cannot accumulate. Section VFF−EMT 1.07 (3) provides for partial vesting after 10 years' service. Should the individual perform more than 10 but less than 20 years' service, upon reaching age 60, he or she will receive only 50% of the net asset value of the benefit account for the first 10 years of service rendered, and an additional 5% for each year thereafter, up to 19 years. Section VFF−EMT 1.07 (7) allows an individual to provide simultaneous service to two or more separate municipalities but, in such cases, only one year of service credit may be earned.

Section VFF−EMT 1.09 details the notice and procedure for when a VFF−EMT ceases performing service for one participating municipality and begins performing service for another municipality, which utilizes a different program administrator or vendor. Such a transfer is allowed, but the account will be frozen and a new one started with the new program administrator. However, any accumulated years of credited service will continue to count toward the vesting requirements. Section VFF−EMT 1.10 allows for benefits to be received both upon disability, or to the beneficiaries upon death of the VFF−EMT.

Section VFF−EMT 1.12 sets forth minimum program administrator qualifications. These include five years of experience providing a length of service award program, adequate marketing and enrollment services capabilities, various accounting and record keeping procedures and abilities, membership in good standing in various organizations customary in the program administrator's or investment manager's industry that provides protection against loss, and overall financial strength.

Section VFF−EMT 1.13 provides for the administration of plans offered by a program administrator under a contract with the Board, and standard provisions to be included. These include compliance with all pertinent state and federal statutes, rules and regulations, mandatory full disclosure to the Board of all fees and commissions earned directly and indirectly on the operations of the program, audits, and data processing system failure and administrative service interruption contingency plans. Also important are the required annual statements to participating municipalities and the individuals they sponsor, detailing all contributions made and the fees commissions, and charges paid that affect the individual's account.

Section VFF−EMT 1.17 provides for a two−step appeals process in which a VFF−EMT may first protest service credit issues to the participating municipality, which may consult with the program administrator. Any decision of the municipality may be reviewed at the Board's discretion. An individual who has a substantial interest affected by a Board decision may appeal directly in writing to the Board. All Board decisions are final.

TEXT OF RULE:

SECTION 1: Ch. VFF−EMT 1 is created to read:

VFF−EMT 1

VOLUNTEER FIRE FIGHTER−EMERGENCY MEDICAL TECHNICIAN SERVICE AWARD BOARD ADMINISTRATIVE RULE

VFF−EMT 1.01 Authority. Sections 16.004 (1), and 16.25 (2), (3), (4) and (5), Stats., authorize the Board to promulgate rules for establishing a length of service award program for volunteer fire fighters and emergency medical technicians.

VFF−EMT 1.02 Purpose. The purposes are to establish a program for length of service awards to VFF−EMT participants who provide services to municipalities that operate volunteer fire departments or volunteer fire companies, or authorize emergency medical and technical services, and to establish qualifications and requirements for private sector individuals and organizations eligible to provide administrative and investment services for length of service award programs.

VFF−EMT 1.03 Definitions. In this chapter:

(1) "Account" means a statement or record of all state and municipal length of service award contributions, including all applicable earnings, redistributions and deductions made on behalf of a VFF−EMT maintained by a program administrator.

(2) "Beneficiary" means a person, trust or entity designated by a VFF−EMT to receive benefits under a program.

(3) "Board" has the meaning specified in s. 16.25 (1) (a), Stats.

(4) "Credit" means the recognition of the fulfillment of the requirements for performing service toward a length of service award under the program.

(5) "Emergency medical services" means medical care that is rendered to a sick, disabled or injured individual based on signs, symptoms or complaints, prior to the individual's hospitalization or while transporting the individual between health care facilities and that is limited to the use of the knowledge, skills and techniques received from training required under s. 146.50, Stats., and chs. HFS 110, 111, 112 or 113, as a condition for being issued an emergency medical technician license.

(6) "Fire fighting services" means the organized suppression and prevention of fires.

(7) "Fiscal year" means the period beginning on July 1 and ending on June 30.

(8) "Length of service award program" or "program" means a program as described in section 457 of the internal revenue code that is implemented and administered by a program administrator approved by the board, and that to the extent allowed by federal law, provides a tax−deferred benefit to an eligible VFF−EMT consistent with the internal revenue code, s. 16.25 Stats., and this chapter.

(9) "Municipality" has the meaning specified in s. 16.25 (1) (c), Stats.

(10) "Net asset value" means the value of an individual length of service award determined by adding the municipal contributions and the state matching contributions, all earnings thereon, and any redistributions as provided in s. VFF−EMT 1.08, less investment expenses.

(11) "Participating municipality" means a municipality that meets the program eligibility requirements of s. VFF−EMT 1.04 and elects to participate in a program.

(12) "Prior service" means the service performed by a VFF−EMT for a participating municipality before that municipality began participation in a program.

(13) "Program administrator" means a non−governmental individual or organization in the private sector that provides and administers a program.

(14) "Service" includes fire fighting, emergency medical, or rescue services provided to a participating municipality by a volunteer fire fighter or volunteer emergency medical technician.

(15) "State" means the state of Wisconsin.

(16) "Volunteer emergency medical technician" or "EMT" means all emergency medical service personnel, including first responders, licensed or certified under s. 146.50, Stats.

(17) "Volunteer fire company" means one that is organized under s. 213.05, Stats.

(18) "Volunteer fire department" has the meaning specified in s. 213.08, Stats.

(19) "Volunteer fire fighter" or "VFF" means a person that renders fire fighting or rescue services to a participating municipality and does not receive compensation under a contract of employment as a fire fighter.

(20) "VFF−EMT" means a volunteer fire fighter or emergency medical technician.

VFF−EMT 1.04 Participating Municipalities. (1) A municipality that operates a volunteer fire department or that contracts with a volunteer fire company organized under Ch. 181 or 213, or that authorizes volunteer emergency medical technicians to provide emergency medical services, is eligible to become a participating municipality.

(2) An eligible municipality may participate in a program by adopting a resolution or ordinance stating that it shall abide by all statutes, administrative rules, regulations and procedures pertaining to a length of service award program. The adopted resolution or ordinance shall be on a form approved by the board and provided to the program administrator or the board upon request.

Note: To request approval of a form for a resolution or ordinance, contact the Length of Service Award Program, c/o Department of Administration, Office of Legal Counsel, P.O. Box 7864, Madison, Wisconsin 53707−7864 or (608) 266−9810.

(3) Each participating municipality shall develop standards for determining the service required of the volunteer fire fighters and emergency medical technicians it sponsors under the program in order to qualify for an annual contribution.

(4) Municipalities that jointly operate or contract with a volunteer fire department or a volunteer fire company or that jointly authorize volunteer emergency medical technicians, may operate as a single participating municipality under the program, and may be required to do so by the program administrator.

(5) (a) A VFF−EMT may perform service for credit toward a length of service award to more than one volunteer fire department, volunteer fire company or entity authorized to provide volunteer emergency medical services.

(b) A VFF−EMT may have only one account for each volunteer fire department, volunteer fire company or entity authorized to provide volunteer emergency medical services to which the VFF−EMT provides service.

VFF−EMT 1.05 Contributions to a program. (1) MUNICIPAL CONTRIBUTIONS. A participating municipality shall determine the amount it will contribute on behalf of each VFF−EMT it sponsors under a program. A participating municipality shall cause an account to be opened with the program administrator for each sponsored VFF−EMT. A participating municipality's contributions shall be paid at least annually to the program administrator or designee.

(2) MATCHING CONTRIBUTIONS. (a) On a calendar year basis, the board shall match a participating municipality's annual contributions made on behalf of its VFF−EMT participants during that calendar year up to a maximum of $250 per eligible VFF−EMT, subject to any annual adjustment under sub. (3). The board shall pay all amounts matched under this section directly to the program administrator or designee, up to a maximum of $2,000,000 in a fiscal year.

(b) Subject to the time period for a protest or appeal under s. VFF−EMT 1. 17, a participating municipality shall pay all contributions for a calendar year to the program administrator or designee on or before January 31 of the following year in order to receive a matching contribution from the board.

(c) The board may not match contributions made by a participating municipality for prior service.

(3) ANNUAL ADJUSTMENT. Annually on July 1, the board shall make any adjustments necessary to the matched funds to be paid in the subsequent calendar year to reflect changes in U.S. consumer price index for all urban consumers, using the method set forth in s. 16.25 (3) (d), Stats.

VFF−EMT 1.06 Contributions for prior service. (1) (a) A participating municipality may make contributions for prior service provided that the VFF−EMT has performed at least five years of service to that municipality, which may include a combination of prior service and service performed after the municipality began participating in a program. The number of years of prior service for which the participating municipality may contribute shall not exceed the number of years of total service provided by the VFF−EMT to that municipality. A participating municipality may impose additional eligibility requirements for accepting prior service.

(b) Subject to applicable internal revenue code restrictions as determined by the program administrator, the minimum contribution payable by a participating municipality for each year of prior service credited to a VFF−EMT shall be $100. A participating municipality may pay a different amount for credited prior service than the amount paid for credited service performed after the municipality began participating in a program.

(c) Subject to applicable internal revenue code restrictions as determined by the program administrator, a participating municipality that makes contributions for prior service may pay those contributions over a number of years not to exceed 20, and may include interest on such payments to reflect the fact that they are being added for prior service over a number of years in lieu of a lump sum payment.

(d) For purposes of determining the board's matching contribution under s. VFF−EMT 1.05 (2), any contributions made by a participating municipality for prior service shall be accounted for separately from contributions for credited service performed after the municipality began participating in a program.

(e) If a participating municipality ceases to exist or ceases its participation in a program, it shall pay the balance owed on any account for contributions made for prior service no later than under the schedule of payments set forth in its agreement with the program administrator.

(2) If a municipality's records are insufficient to establish eligibility for the purchase of prior service for a VFF−EMT, the municipality shall conduct a thorough investigation and, using the standards for determining the service required to qualify for annual contributions under s. VFF−EMT 1.04(3), shall make a decision based upon good faith belief and the best information available as to the prior service claimed.

VFF−EMT 1.07 Vesting and Receipt of Length of Service Award. (1) VESTING. A VFF−EMT is required to provide 10 years of service for which credit has been given before the VFF−EMT may receive any benefits under the program. A VFF−EMT that has provided 20 years of credited service to a participating municipality shall be fully vested and paid a length of service award upon reaching age 60.

(2) FULLY VESTED. (a) Upon receiving payment of a length of service award, a fully vested VFF−EMT age 60 or older may continue to provide credited service toward a length of service award under a new account, but shall be paid any subsequent contributions made on the VFF−EMT's behalf by the participating municipality or the board immediately after they are received by the program administrator or designee.

(b) A fully vested VFF−EMT age 60 or older shall notify the program administrator and the participating municipality of the VFF−EMT's request to receive their length of service award within the time period required by the program administrator or the applicable program.

(3) PARTIALLY VESTED. (a) Upon reaching age 60, a VFF−EMT may request and receive their length of service award at any time after performing a minimum of 10 years of credited service and discontinue providing eligible service.

(b) Upon reaching the age of 60, a VFF−EMT requesting to receive their length of service award after performing 10 years, but less than 20, of credited service shall receive 50% of the net asset value of their account at the time of the request for the first 10 years of creditable service provided. For each year of credited service more than 10, but less than 20, performed by the VFF−EMT, five percent of the net asset value of the account at the date of the request shall be added. The amounts not paid to a VFF−EMT under this subsection shall be forfeited and equally distributed among all other open VFF−EMT accounts sponsored by that municipality at the time of the forfeiture.

(c) A VFF−EMT who has reached age 60 but is not fully vested may continue to perform service for credit toward a length of service award.

(4) NEW ACCOUNTS. At any time a VFF−EMT receives a length of service award associated with an account, they may discontinue providing eligible service and accruing service credit under that account, and begin providing eligible service under a new account.

(5) PRIOR SERVICE CREDIT. For vesting purposes under this section and s. 16.25, Stats., credit for service performed by a VFF−EMT may include prior service credited under s. VFF−EMT 1.06 (1) (a).

(6) FORM OF BENEFIT DISTRIBUTION. A VFF−EMT may receive their length of service award payment either in a lump sum or by any other method offered by the program administrator and approved by the board. The form of benefit distribution shall be determined by the program administrator and approved by the board. The chosen form shall be stated in the specific plan documents provided by the program administrator.

(7) SIMULTANEOUS SERVICE. For purposes of determining vesting under this section and s. 16.25, Stats., if a VFF−EMT simultaneously renders service to two or more separate and distinct municipalities, no more than one year of service may be credited toward any length of service award in any calendar year the VFF−EMT provided multiple service.

VFF−EMT 1.08 Forfeiture and leaves of absence. (1) NON−VESTED FORFEITURE. (a) A VFF−EMT that has performed less than 10 years of service under a program shall forfeit any accumulated years of service if they cease to perform creditable service for more than six months in any calendar year, unless a supervisor has granted the VFF−EMT a leave of absence for that period.

(b) A participating municipality may determine the conditions under which a leave of absence shall be granted. A participating municipality shall grant a leave of absence in writing on or before December 31 of the calendar year in which it is to take effect.

(2) FORFEITED ACCOUNT DISTRIBUTION. A forfeited account shall be equally distributed among all other open VFF−EMT accounts sponsored by a participating municipality at the time of the forfeiture. Forfeitures may not be distributed to an account frozen under s. VFF−EMT 1.09 (1).

(3) NOTICE UPON TRANSFER OF SERVICE. For vesting purposes under s. VFF−EMT 1.07, upon joining or exiting a program, a VFF−EMT shall notify the new program administrator and any previous program administrator before forfeiture is to occur in order to qualify for transfer of their credited service years.

VFF−EMT 1.09 Transfer of service to a different program administrator. (1) FROZEN ACCOUNTS. When a VFF−EMT ceases performing service for one participating municipality and begins performing service for another that utilizes a different program administrator, their account shall be frozen. No contributions or forfeiture distributions may be made to a frozen account, but a frozen account shall continue to accrue earnings.

(2) SERVICE TRANSFER. Any service credited to a VFF−EMT associated with a frozen account shall count toward vesting under s. VFF−EMT 1.07, provided the VFF−EMT meets the notice requirements of this section, and either of the following occurs:

(a) If the VFF−EMT has accumulated less than 10 years of service, the participating municipality, for which the service was provided and the account opened, has granted the VFF−EMT a leave of absence.

(b) The VFF−EMT begins performing creditable service for a subsequent participating municipality within 6 months of ceasing to perform creditable service for VFF−EMT's former participating municipality.

(3) VFF−EMT NOTICE. (a) A VFF−EMT shall provide a copy of the leave of absence granted under s. VFF−EMT 1.08 (1) (b) to the current participating municipality's program administrator within 6 months of beginning their new service.

(b) A VFF−EMT wishing to transfer service under this section shall provide the current program administrator with the most recent annual statement of service issued under s. VFF−EMT 1.11 (2) by their former participating municipality.

(c) In order to receive payment of a length of service award under section s. VFF−EMT 1.07 from a frozen account, a VFF−EMT shall notify their former program administrator of any service credited by a subsequent program administrator.

(4) PROGRAM ADMINISTRATOR NOTICE. (a) A program administrator shall accept a statement of service provided by a VFF−EMT under this section, and record the number of whole years stated and the associated account identifier on the new account opened for the VFF−EMT.

(b) For purposes of vesting and payment of a length of service award under s. VFF−EMT 1.07, a program administrator shall accept all service credited to a VFF−EMT by any subsequent program administrator, provided it has received notice from the VFF−EMT as required by sub. (3) (c).

VFF−EMT 1.10 Disability and death benefits. (1) DISABILITY. If a VFF−EMT becomes permanently disabled as determined by the Wisconsin worker's compensation program under ch. 102 Stats., while actively on duty performing service, the VFF−EMT may apply to the program administrator for payment of the net asset value of each of the disabled VFF−EMT participant's accounts. Upon request, the program administrator shall make payment as soon as administratively possible.

(2) DEATH. If a VFF−EMT dies while actively on the rolls of a volunteer fire department, volunteer fire company, or an emergency medical service that provides services to a participating municipality under a program, the VFF−EMT's designated beneficiary shall be paid an amount equal to the net asset value of each account held by the VFF−EMT designating that beneficiary. Upon request, the program administrator shall make payment as soon as administratively possible.

VFF−EMT 1.11 Records and certification of service. (1) Each participating municipality shall maintain and submit to the program administrator as required under a program, detailed and accurate records of every VFF−EMT providing fire fighting or emergency medical services to that municipality.

(2) Annually, on or before January 31, a participating municipality shall submit under oath a statement of service to the program administrator listing all VFF−EMT members that have performed service for that municipality for the preceding calendar year, and post the statement of service in a conspicuous place for a minimum of 30 days thereafter.

VFF−EMT 1.12 Program administrator qualifications. (1) Based upon a request for proposal process, the board shall contract with one or more program administrators to offer a length of service award program that is approved. A program administrator awarded a contract shall comply with all of the following:

(a) Have at least 5 years experience administering a length of service award program as described in section 457 of the internal revenue code, or a deferred compensation program as provided for therein. The program administrator's experience shall include administering at least one program that has a participation level of 1,000 or more individual members, multiple participating jurisdictions, and

consolidated record keeping for all investment options offered.

(b) Have marketing and enrollment services that include the following:

1. At least annual contacts to each participating municipality and VFF−EMT describing the program and the investment options offered by the program administrator.

2. Presentations to all participating municipalities and VFF−EMT participants that include full disclosure of all direct and indirect fees and costs of the program as well as advantages and disadvantages of participating investment options offered by the program administrator.

3. Literature and forms regarding the program and the investment options offered by the program administrator to be distributed to all participating municipalities and VFF−EMT participants that are in a format approved by the board.

(c) Have services that provide unlimited opportunities to increase or decrease contributions and to redirect contributions to other investment options offered by the program administrator.

(d) Have accounting procedures and consolidated record keeping for account transactions that maintain all participating municipalities' and VFF−EMT participants' records and submits deposits, transfers and withdrawals to the investment companies offering investment options under the program.

(e) Have membership in good standing by the program administrator or the manager of any investment options offered in an organization customary in the program administrator's or investment manager's industry that provides protection against loss.

(f) Have no litigation risks or involvement in pending regulatory action deemed by the board or the department to be material to the continued operations of the program administrator.

(2) The board shall consider the financial strength of a program administrator or an entity affiliated with the program administrator for purposes of operating a program, on the basis of its net worth and the ratio of net worth to present or projected assets under management.

VFF−EMT 1.13 Program administration. (1) A program administrator awarded a contract to provide a length of service award program shall sign a contract with the board in which the program administrator agrees to do all of the following:

(a) Comply with all statutes, rules and regulations governing the program and share pertinent information, such as municipal contributions and state matching funds, with the board and any other program administrator under contract with the board to ensure compliance with the state and federal law and regulations.

(b) Obtain pre−approval by the board of the mandatory disclosures to participating municipalities set forth in s. VFF−EMT 1.12 (1) (b) 1.

(c) At least annually, provide full disclosure to the board of all fees and commissions earned directly or indirectly on operations of the program by the program administrator, and other financial information relative to a VFF−EMT account maintained by a program administrator, including municipal and state contributions, forfeitures, and disbursements.

(d) Provide, at the program administrator's expense, an annual independently audited financial statement of the affiliated entity providing the investment or insurance plan to a participating municipality under the program to the board within 120 days following the end of each calendar year.

(e) Submit to the board an acceptable contingency plan to address both data processing systems failures and administrative service interruptions.

(f) Upon request, provide a copy of the fund prospectus and annual report for each investment option offered by the program administrator to participating municipalities and enrolled VFF−EMT participants.

(g) Cooperate with other program administrators to provide for service credit portability between program administrators under s. VFF−EMT 1.09.

(h) At least annually, provide statements to participating municipalities and enrolled VFF−EMT participants detailing contributions made on behalf of a VFF−EMT by a participating municipality, account balance information, and disclosure of all fees, commissions and charges affecting that account's earnings or balances.

(i) Provide an annual report to all participating municipalities, VFF−EMT participants and the board illustrating the investment performance of all investment options offered.

(j) Cooperate with any successor program administrator, including extending the term of the contract for a reasonable period of time as may be necessary, to ensure a smooth transition of program administrators.

(k) Provide opinions of tax counsel or other legal counsel to the board as necessary.

(2) The program administrator, its agents, and the investment options offered, shall meet all applicable state and federal laws, rules and regulations including the internal revenue code, security and exchange commission regulations, and state and federal insurance laws and regulations.

VFF−EMT 1.14 Participating municipality obligations. (1) In fulfillment of its responsibility as a fiduciary of the program, a participating municipality shall review information provided by the program administrator including the mandatory disclosures described in s. VFF−EMT 1.12 (1) (b) (1).

(2) A participating municipality shall sign a contract with the program administrator for program services provided under s.16.25, Stats., and ch. VFF−EMT 1.

(3) A participating municipality shall sign a memorandum of understanding with the program administrator prior to selecting any investment option offered stating that all requirements and regulations pertinent to that option have been clearly explained by that program administrator and that the participating municipality has received an explanation by the program administrator or its representatives of the mandatory disclosures described in s. VFF−EMT 1.12 (1) (b) 1.

VFF−EMT 1.15 Program amendment. A participating municipality may amend a program in compliance with all applicable statutes and rules, and the requirements of the program administrator and the board.

VFF−EMT 1.16 Program termination. A participating municipality may terminate a program by adopting and filing a resolution to that effect with the board. The board shall promptly submit a copy of the resolution to the program administrator. A termination shall comply with all applicable statutes and rules, and the requirements of the program administrator and the board. All accounts of VFF−EMT participants in a terminated program shall be treated in the same manner as accounts in a program in which the sponsoring participating municipality ceased to exist as set forth in s. VFF−EMT 1.06 (1) (e).

VFF−EMT 1.17 Appeals. (1) PROTEST TO MUNICIPALITY. A VFF−EMT may protest an issue of service credit or other matter affecting the VFF−EMT's substantial interest under the program in writing to the sponsoring participating municipality. The participating municipality shall review the documentation and other submissions and make a determination in writing and return it to the protesting party within 30 days of the receipt of the written protest. The participating municipality may consult with the program administrator as required. Upon request, the board may review a participating municipality's decision.

(2) APPEAL TO THE BOARD. An individual who has a substantial interest affected by a board decision may appeal in writing to the board within 30 days of the receipt of the participating municipality's written determination. The board shall review the documentation and other submissions and make a determination in writing and return it to the appealing party within 90 days of the receipt of the written appeal. All decisions of the board shall be final.

Initial Regulatory Flexibility Analysis:

Pursuant to section 227.114, Stats., the rule herein is not expected to negatively impact small businesses.

Fiscal Estimate:

No State Fiscal Effect. The rule establishes procedures for operation of the volunteer fire fighter EMT length of service award program. The program has been budgeted based on estimates of participation. The procedures permit the program to proceed and do not change the basis for participation in the program.

Contact Person:

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(608) 266−2887

Notice of Hearing

Workforce Development
(Economic Support, Chs. DWD 11 to 59)
[CR 01 − 138]

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.24 and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider the creation of rules relating to child support incentive payments.

Hearing Information

January 7, 2002	GEF 1 Bldg. Rm E206
Monday	201 E. Washington Ave.
1:30 p.m.	Madison, WI

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

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267−9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: ss. 49.24, and 227.11, Stats.

Statute interpreted: s. 49.24, Stats.

Relevant federal law: 42 USC 658a; 45 CFR Part 305

Pursuant to s. 49.24, Stats., the Department of Workforce Development distributes child support incentive payments to counties. A county may use the payments only to pay costs under its child support program. Funding for the incentive payments is from monies that Wisconsin earns under the federal child support incentive payment program and from child support assigned to the state by public assistance recipients. The state funds are transferred from the Wisconsin Support Collections Trust Fund to an appropriation account under s. 20.445 (3) (k), Stats. Total payments to counties may not exceed $12,340,000 per year, and payments from child support assigned to the state by public assistance recipients may not exceed $5,690,000 per year.

The federal child support incentive payments are earned pursuant to the Child Support Performance and Incentive Act of 1998 (Pub. L. No. 105−200, 42 USC 658a) and implementing regulations published in the *Federal Register* on December 27, 2000. Under federal law, states compete against one another for a share of an incentive payment pool that is set by statute. A state's share of the incentive payment pool is determined by the state's performance on federal performance measures relative to the performance of other states. Pursuant to 45 CFR 302.55, the state must share incentives earned with any political subdivision that shares in funding the administrative cost of the state's child support program.

The proposed rule specifies a procedure for distributing incentive payments to counties and tribes that enter into a cooperative agreement with the department for the delivery of child support services under the state child support plan. The proposed rule is based on the federal procedure for distributing incentive payments to states, and the focus of the rule is to provide incentives for agency performance that will maximize the amount of the federal incentive payment that Wisconsin receives.

The proposed rule provides that the department consult with representatives of child support agencies in implementing the procedure for distributing incentive payments to counties. The representatives are members of a subcommittee of the Child Support Policy Advisory Committee known as the county contract committee. They are appointed by local child support agency representatives on the policy advisory committee and serve to advise the department on matters relating to child support incentive payments.

In consultation with the county contract committee, the department will estimate the total state and federal incentive funding that will be available for distribution to counties in the following year. In consultation with the county contract committee, the department determines each county's allocation, or share of the projected incentive funding, based on the following criteria: all child support agencies shall have funds available to achieve performance measures, agencies of similar size should receive equitable treatment, and a high level of performance is necessary in the large Wisconsin agencies to maximize the federal share of incentives. The allocation is the estimated minimum incentive payment amount that the agency is expected to receive if the actual incentive funding is equal to or exceeds the projected incentive funding and the agency's earned level is 100%.

In consultation with the county contract committee, the department establishes measures of performance and

agencies earn incentive payments based on individual agency performance under each performance measure. The state measures for agency performance include one or more of the following federal measures for state performance:

- paternity establishment
- support order establishment
- collection of current child support due
- collection of child support arrearages
- cost effectiveness

The state performance measures also include any other measures, or any modification to the measures used by the federal Office of Child Support Enforcement in providing incentive payments to states.

In consultation with the county contract committee, the department determines the weight to be given each performance measure and performance scales for each performance measure. The performance scales are used to determine agency earned levels for each performance measure. There are two methods of determining earned levels: (1) a table with performance levels and corresponding earned levels based on the federal performance levels, taking into account any potential federal penalties, or (2) an alternative method of evaluating performance levels based on an agency's incremental change from the agency's performance in the preceding year. In making the determinations, the department and agency representatives will consider state performance levels necessary to avoid federal penalties, past state performance on federal performance measures, projected future state performance on federal performance measures, and circumstances beyond the control of agencies that affect agency performance. The overall purpose of the determinations is to target areas for statewide improvement to maximize the state share of federal incentive dollars while ensuring that agencies have funds available to achieve the purposes of the child support program.

The formula to determine the amount of an agency's incentive payment is a 4−step process as follows:

1. The first step is determining each agency's combined earnings by adding the agency earned amounts for each performance measure. The agency's allocation is multiplied by the weighted earned level for each performance measure to determine the earned amount for each measure.

2. The second step is determining the statewide combined earnings by adding the agency combined earnings for all agencies.

3. The third step is determining each agency's share of the total available incentive funding by dividing the agency combined earnings by the statewide combined earnings.

4. The fourth step is determining each agency's incentive payment amount by multiplying the agency's share of the total available incentive funding by the total available incentive funding.

The department will distribute the total available incentive funding to counties and eligible tribes or tribal organizations. A tribe or tribal organization that enters into a cooperative agreement with the department for the delivery of child support services under the state plan pursuant to 42 USC 654(33) shall receive an incentive payment under this chapter based on the same criteria and subject to the same restrictions as counties carrying out activities under the state plan. A tribe or tribal organization that receives direct tribal child support enforcement funding pursuant to 42 USC 655(f) may not receive an incentive payment under this chapter.

The total incentive payment to a county under this chapter may not exceed the costs per year of the county's child support program. A county that receives an incentive payment may use the funds only to pay costs under its child support program. A county that receives an incentive payment may use the funds only to supplement, and not supplant, the baseline level of county funding for its child support program as determined by averaging the county's contribution to its IV−D expenditures in calendar years 1996, 1997, and 1998, unless waived by the department. The department will waive this requirement if the state is in compliance with federal reinvestment requirements under 45 CFR 305.35.

Initial Regulatory Flexibility Analysis

The proposed rule does not affect small business as defined in s. 227.14, Stats.

Fiscal Impact

Section 49.24, Stats., provides for child support incentive payments to counties using a combination of state and federal funds. The maximum annual distribution amount is $12,340,000, of which a maximum of $5,690,000 can come from state funds. Non−GPR funds from child support assigned to the state by public assistance recipients are used for the state component. The state funds are transferred from the Wisconsin Support Collections Trust Fund to an appropriation account under s. 20.445 (3) (k), Stats. The remainder of the annual distribution is dependent on the amount of federal funds available.

The proposed rule is a formula to distribute incentive payments available under s. 49.24, Stats. It is designed to provide incentives for counties to perform well on measures that will earn Wisconsin an increased incentive payment from the federal Office of Child Support Enforcement. If the state performs well on the federal performance measures in relation to other states, more federal incentive money will be available for distribution to counties. Under current law, this will not change the maximum amount that may be distributed under s. 49.24, Stats., but it may change the proportion of federal and state funds used in a given year, and it may increase the likelihood that the maximum of $12,340,000 is available. A change in the mix of federal and state costs will have no net annualized fiscal effect. Any future change in costs by source of funds cannot be predicted at this time.

Contact Information

The proposed rules are available on the DWD web site at http://www.dwd.state.wi.us/dwd/hearings.htm. A paper copy may be obtained at no charge by contacting:

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Office of Legal Counsel
Dept. of Workforce Development
201 E. Washington Avenue
P.O. Box 7946
Madison, WI 53707−7946
(608) 267−9403
pridgel@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than January 14, 2002, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

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

Commerce
(CR 01−113)
Ch. Comm 108 − Relating to Community Development Block Grant Program.

Health and Family Services
(CR 00−020)
Ch. HFS 56 − Relating to foster home care for children.

Health and Family Services
(CR 01−105)
Ch. HFS 145 − Relating to control of communicable diseases.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes 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 Revisor of Statutes Bureau at (608) 266−7275 for updated information on the effective dates for the listed rule orders.

Health and Family Services
(CR 99−071)

An order affecting ch. HFS 58, relating to the eligibility of nonparent relatives of children to receive kinship care or long−term kinship care benefits to help them provide care and maintenance for the children.

Effective 2−1−02

Health and Family Services
(CR 01−073)

An order affecting ch. HFS 119, relating to operation of the health insurance risk−sharing plan (HIRSP).

Effective 2−1−02

Higher Educational Aids Board
(CR 01−078)

An order creating ch. HEA 13, relating to the teacher education loan program.

Effective 2−1−02

Higher Educational Aids Board
(CR 01−079)

An order creating ch. HEA 14, relating to the teacher of the visually impaired loan program.

Effective 2−1−02

Insurance
(CR 01−074)

An order affecting chs. Ins 6, 26 and 28, relating to revising Wisconsin agent licensing rules to be reciprocal and more uniform under Gramm Leach Bliley Act and the NAIC Producer model.

Effective 2−1−02

Regulation and Licensing
(CR 01−068)

An order affecting ch. RL 10, relating to certification of optometrists to use diagnostic pharmaceutical agents.

Effective 2−1−02

Public notice

Financial Institutions − Division of Savings Institutions

(Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts for 2002)

Under Section 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association, or mortgage banker, which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance, shall pay interest on the outstanding principal of the escrow.

Section 138.052 (5) (am) 2., Stats., directs the Department of Financial Institutions, Division of Savings Institutions, to determine annually the required interest rate. The rate is based on the average interest rate paid by Wisconsin depository institutions on passbook savings accounts.

The Department of Financial Institutions, Division of Savings Institutions, has calculated the interest rate required to be paid on escrow accounts under Section 138.052 (5), Stats., to be 2.09% for 2002. This interest rate shall remain in effect through December 31, 2002.

Contact Person:

Mr. Michael J. Mach

Department of Financial Institutions

Telephone (608) 266−0451

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