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Emergency rules now in effect

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

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

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

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

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

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

Agriculture, Trade & Consumer Protection (2)

1. Rules adopted amending **s. ATCP 10.47 (2) (c) and (3) (b) 3.**, relating to minimum acreage requirements for farm-raised deer hunting preserves.

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers state laws related to farm-raised deer. DATCP currently licenses deer farms and issues certificates for deer hunting preserves, pursuant to s. 95.55, Stats., and ch. ATCP 10, Wis. Adm. Code.

(2) Current law generally prohibits deer hunting preserves smaller than 80 acres. However, 2005 Wis. Act 359 (enacted effective May 3, 2006) provides a limited “grandfather” exemption for certain white-tailed deer hunting preserves previously licensed by the Department of Natural Resources (“DNR”). Under Act 359, a white-tailed deer hunting preserve is exempt from the 80-acre minimum size requirement if, *among other things*, the acreage of the hunting preserve is “not less than the acreage subject to the deer farm license on December 31, 2002.” This rule clarifies that the “acreage subject to the deer farm license on December 31, 2002” means the *hunting* acreage subject to the deer farm license on December 31, 2002. Without this interpretation, Act 359 would have no practical effect and would be rendered a nullity.

(3) The “grandfather” exemption in Act 359 is limited to hunting preserve operators who apply by November 1, 2006.

DATCP must act on applications within 90 business days. Action may affect an operator’s ability to operate during the 2006 hunting season. DATCP is adopting this rule as an emergency rule, in order to facilitate timely action on applications. DATCP could not adopt this rule by normal rulemaking procedures in time to implement Act 359.

Publication Date: October 9, 2006
Effective Date: October 9, 2006
Expiration Date: March 7, 2007
Hearing Date: November 13, 2006

2. Rules adopted creating **ch. ATCP 112**, relating to credit report security freezes.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) will administer s. 100.54, Stats. as of January 1, 2007. DATCP is required under s. 100.54 (12), Stats. to adopt rules related to identification required of consumers requesting credit report security freezes.

(2) As of January 1, 2007, s. 100.54, Stats. will be in effect, however without an emergency rule the statute will be unclear regarding what constitutes proper identification for purposes of creating a security freeze, temporarily releasing a security freeze or permanently removing a security freeze from a consumer credit report.

(3) DATCP is adopting this emergency rule for the sole purpose of allowing consumers to clearly place a security freeze on their consumer credit report while the permanent rulemaking process is completed.

Publication Date: January 19, 2007
Effective Date: January 19, 2007
Expiration Date: June 18, 2007
Hearing Date: February 12, 2007

Dentistry Examining Board

Rules were adopted amending **ch. DE 11**, relating to better identifying the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation–enteral, conscious sedation–parenteral, deep sedation, and general anesthesia, and the requirements for each level.

Finding of Emergency

The board finds that failure to delay the effective date of CR04–095, from January 1, 2007, to July 1, 2007, will create a danger to the public health, safety and welfare. The extra six months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients.

Publication Date: December 21, 2006
Effective Date: December 29, 2006
Expiration Date: May 28, 2007
Hearing Date: January 31, 2007

Financial Institutions – Banking

Rules were adopted revising **ch. DFI—Bkg 77**, relating to pawnbrokers.

Finding of Emergency

The effect of 2005 Wisconsin Act 158 is that pawnbrokers licensed by the department under s. 138.09, Stats., are exempt from s. 138.10, Stats., effective October 1, 2006. Under statutory procedures, however, a permanent rule regulating these pawnbrokers is unlikely to be effective until mid-2007, leaving the public without the safeguards of the permanent rule until that time. Thus the preservation of public safety and welfare necessitates enacting the safeguards of the emergency rule until a permanent rule is in effect.

Publication Date: September 25, 2006
Effective Date: October 1, 2006
Expiration Date: February 28, 2007
Hearing Date: December 13, 2006

Insurance (2)

- Rules adopted creating **ss. Ins 9.25 (8) and 9.27 (4)**, Wis. Adm. Code, relating to preferred provider plan applicability dates and affecting small business plan limited exemption.

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:

The rule identifies a limited group of policies issued by licensed insurers offering preferred provider plans that do not comply with newly promulgated **ch. Ins 9**, Wis. Adm. Code. In compliance with the request of the Joint Committee for the Review of Administrative Rules (JCRAR), this rule must be issued as an emergency rule and permanent rule. It is not possible to complete the permanent rule process prior to the effective date of the chapter, January 1, 2007, therefore this emergency rule is necessary.

The commissioner has filed a notice of scope for drafting the permanent rule corresponding to this emergency rule and will continue with the permanent rule making process. It is intended that one rule hearing can be held to comply with both the emergency rule and permanent rule requirements.

Publication Date: August 31, 2006
Effective Date: September 1, 2006
Expiration Date: January 29, 2007
Hearing Date: December 12, 2006
Extension Through: March 29, 2007

- Rules adopted revising **s. Ins 6.77**, relating to underinsured and uninsured motorist coverage in umbrella and commercial policies.

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:

These changes will modify the rule in light of the recent Supreme Court decisions, *Rebernick v American Family Mutual Ins Company*, 2006 WI 27 and *Rocker v USAA Casualty Ins Company*, 2006 WI 26. In *Rebernick*, the court held that s. 632.32 (4m), Stats., applies to personal umbrella policies. In *Rocker*, the court held that s. 632.32 (6) (a), Stats., applies to commercial general liability policies and commercial umbrella policies. These interpretations are inconsistent with current insurer practices and OCI's expectation of what would be covered in these types of policies.

Compliance with this interpretation would create significant, if not impossible compliance problems for insurers. Many insurers who write umbrella coverage do not write and are not even licensed to write automobile coverage. A second, difficult issue is that the limits for umbrella coverages are generally very high, \$1,000,000. It is unclear how an umbrella policy would reconcile these limits with the underlying auto policy and underinsured motorist coverage. For this reason, OCI had previously by rule exempted umbrella policies from the similar requirements of the uninsured motorist coverages in s. 632.32, Stats. For similar reasons, the same revision is being made for commercial liability policies.

Publication Date: September 29, 2006
Effective Date: September 29, 2006
Expiration Date: February 26, 2007
Hearing Date: December 11, 2006

Natural Resources (Environmental Protection – Hazardous Waste, Chs. NR 600—)

Rules adopted revising **chs. NR 660 to 665**, relating to hazardous waste management.

Exemption from Finding of emergency

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

In 2001, EPA proposed regulations to change the hazardous waste manifest requirements under the federal Resource Conservation and Recovery Act (RCRA) to eliminate all state-specific manifest requirements and to require electronic submittal of the manifests. The EPA's final rule was published March 4, 2005, with correcting amendments published on June 16, 2005, and the effective date is September 5, 2006. The new regulations require the use of standardized manifest forms in all states and require certification from EPA in order to print the manifest forms. (Final action on the e-manifest was postponed.) Unlike most RCRA rules, this federal regulation will take effect, nation-wide, on the effective date. The new federal requirements will apply in all states, including Wisconsin, but will not override or supersede Wisconsin's state-specific hazardous waste manifest requirements. Accordingly, the potential exists for conflicting or additional state manifest requirements to exist beginning on that date, and the advantages of a single, uniform nationwide rule will be lost.

The normal administrative rulemaking process cannot be completed in time to conform Wisconsin's hazardous waste manifest requirements to the new EPA manifest regulations by their September 5, 2006 effective date. However, failure to adopt the new federal requirements as state rules by this date may cause legal uncertainty and potential confusion

among hazardous waste generators, transporters and treatment, storage and disposal facility operators, as well as state regulatory program staff. This could interfere with interstate commerce and the orderly functioning of government, imposing unnecessary regulatory costs on Wisconsin individuals and businesses and out-of-state companies doing business in Wisconsin, to the detriment of the public welfare. More importantly, the potential confusion caused by different state and federal manifest requirements could lead to improper transportation and management of hazardous wastes, resulting in a threat to public health or safety and the environment.

Publication Date: September 2, 2006
Effective Date: September 5, 2006
Expiration Date: February 2, 2007
Hearing Date: September 26, 2006
Extension Through: March 2, 2007

Optometry Examining Board

A rule was adopted creating **ch. Opt 8**, relating to continuing education.

Exemption from finding of emergency

2005 Wisconsin Act 297 section 58 states in part:

“(3) Continuing education rules. (b) ...Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the optometry examining board is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.”

Plain language analysis

Chapter Opt 8 is being created to incorporate the continuing education requirements that optometrists must complete in order to renew their registrations. As a result of the changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, all optometrist will now be required to complete 30 hours of continuing education. Previously, only optometrists who were certified to use diagnostic pharmaceutical agents (DPA) and therapeutic pharmaceutical agents (TPA) were required to complete continuing education course work.

Publication Date: November 8, 2006
Effective Date: November 8, 2006
Expiration Date: April 7, 2007
Hearing Date: December 7, 2006

Regulation and Licensing

Rules adopted creating **chs. RL 160 to 168**, relating to substance abuse professionals.

Exemption from finding of emergency

Section 9140 (1q) of 2005 Wisconsin Act 25 states in part: “Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.”

Plain language analysis

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval and professional liability insurance for substance abuse professionals.

Publication Date: November 27, 2006
Effective Date: December 1, 2006
Expiration Date: April 30, 2007
Hearing Date: February 13, 2007

Transportation (2)

1. Rules adopted creating **ch. Trans 515**, relating to contractual service procurement.

Exemption from finding of emergency

The Legislature, by Section 8 of 2005 Wis. Act 89, provides an exemption from a finding of emergency for the adoption of the rule.

Analysis Prepared by the Department of Transportation

The proposed rule requires a cost benefit analysis before procuring engineering or other specialized services under s. 84.01 (13), Stats., in excess of \$25,000 when those services are normally performed by state employees. The required analysis includes a comparison between the costs of contracting out and performing the services with state employees. The analysis also considers other subjective factors such as timeliness, quality and technical expertise.

Publication Date: July 1, 2006

Effective Date: July 1, 2006

Expiration Date: See section 8 (2) of 2005 Wis. Act 89

Hearing Date: August 8, 2006

2. Rules adopted revising **ch. Trans 276**, relating to allowing the operation of certain 2–vehicle combinations on certain highways without a permit.

Exemption from finding of emergency

The Legislature, by Section 7 of 2005 Wis. Act 363, provides an exemption from a finding of emergency for the adoption of the rule.

Plain language analysis

Section 348.07 (1), Stats., historically has limited vehicle lengths on Wisconsin highways to 65 feet. Section 348.07(2), Stats., allowed vehicles meeting the specifications of that subsection to operate without permits despite exceeding the 65–foot limit of subsection (1).

2005 Wis. Act 363 amended s. 348.07, Stats., and essentially made 75 feet the default permitted length on the state trunk highway system. Wisconsin’s old default 65–foot overall length limit still applies on all local roads but only applies to state trunk highways that are designated as 65–foot restricted routes by the Department. This emergency rule making establishes a preliminary list of such “65–foot restricted routes.”

Prior to Act 363, s. 348.07 (4), Stats., permitted the Department to designate “long truck routes” upon which no

overall length limits apply. The Department designates the state's long truck routes in s. Trans 276.07. This rule making does not affect those longstanding designations.

The new "default" 75-foot overall length limit applies on state highways that are neither designated as 65-foot restricted routes under this rule making nor long truck routes under s. Trans 276.07.

Definitions have been added to the rule to make it easier to identify the nature of designations made by the Department in Ch. Trans 276.

In drafting this rule the Department noticed several items that it believes may be of special interest to the legislature and which, in the Department's view, deserve special legislative attention. First, Act 363 did not grant any authority for 75-foot vehicles using the new 75-foot routes to leave those routes to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly facilities or points of loading or unloading. The Department does not believe this oversight was intentional and, on an emergency basis, has designated the intersection of each 75-foot route and any other highway as a long truck route under its authority in s. 348.07 (4), Stats. This will permit trucks to exceed the 65-foot default length limit on local roads to access such facilities and make deliveries. The Department encourages the legislature to consider statutorily establishing access rights for vehicles using 75-foot restricted routes.

The second consequence of Act 363 the Department has discovered in drafting this emergency rule is that one statute that formerly restricted double-bottom tractor-trailer combinations to the state's long-truck network was repealed by the deletion of the reference to s. 348.07 (2) (gm), Stats., by the Act's amendment of s. 348.07 (4), Stats. Under the amended statute, as revised by Act 363, it might appear to a reader that double bottom trucks of unlimited length may operate upon any highway in the state, including local roads and streets, without permits. Section 348.08 (1) (e), Stats., however, continues to provide that double-bottom trucks be restricted to highways designated by the department under s. 348.07 (4). WisDOT believes this provision continues to limit double-bottom operation to long truck routes designated by the Department under s. 348.07 (4), Stats. WisDOT would suggest the deleted reference to (2) (gm) in 348.07 (4), Stats., be re-inserted into the statute to avoid confusion.

Finally, the Department notes that s. 348.07, Stats., is becoming difficult to decipher from a legal standpoint because of the many amendments that have been made to it over the years. It may be that recodifying the statute for the purpose of clarification of the length limitations of Wisconsin law would be helpful to truck and long vehicle operators in this state.

Publication Date: September 15, 2006
Effective Date: September 15, 2006
Expiration Date: See section 7 (2) of 2005 Wis. Act 363
Hearing Date: October 4, 2006

Workforce Development (Workforce Solutions, Chs. DWD 11 to 59)

Rules adopted revising s. DWD 56.06, relating to child care rates and affecting small businesses.

Finding of Emergency

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

The child care subsidy budget estimates that the child care subsidy program will have a tight budget by the end of fiscal year 06-07. This is due to flat federal funding, rising caseload, and increased provider costs. To begin to address the tight budget, the Department will not increase the child care subsidy maximum rates for 2007. This emergency rule will maintain the maximum rates at 2006 levels.

Publication Date: January 22, 2007
Effective Date: January 22, 2007
Expiration Date: June 21, 2007

Workforce Development (Public Works Compensation, Chs. DWD 290-294)

Rules adopted amending s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

Finding of Emergency

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

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

Publication Date: December 28, 2006
Effective Date: January 1, 2007
Expiration Date: May 31, 2007
Hearing Date: February 19, 2007

Scope statements

Health and Family Services

Subject

The Department of Health and Family Services proposes to repeal and recreate chs. HFS 110, 111, 112, and 113, relating to emergency medical services (EMS).

Policy Analysis

Emergency medical services have been in existence for 40 years. In the State of Wisconsin, rules were enacted in the mid–seventies to direct and coordinate the actions of EMS workers. As the profession grew and levels of providers expanded, the department adopted subsequent rules for each new level of provider through emergency rule action. These emergency rule actions have created permanent rules that are inconsistent and difficult to follow and enforce. To increase consistency, organization and clarity of the EMS rules, the department intends to consolidate, correct and update the requirements and operational guidelines for all providers by repealing and recreating chs. HFS 110, 111, 112 and 113 into a single chapter of rules under ch. HFS 110.

As part of this process, the department intends to establish, by rule, conditions under which the department may assess administrative fees and penalties against providers who violate rules or who are delinquent in license renewal. The department does not intend to assess providers initial or renewal licensing fees.

The department also intends to create a critical care paramedic level licensure. Critical care advanced level skills are required for severely ill patients that require transport from one medical facility to another. Ambulance service providers have had significant difficulty being reimbursed by payers for these services. The creation of this license level will help to define those skills and treatments that are considered critical care.

The Department may propose additional changes to rules it determines are necessary during the repeal and recreation of chs. HFS 110, 111, 112 and 113.

Statutory Authority

Sections 146.50 (4) (c), (5) (b), (6) (b), (8m) and (13), 146.53 (5) (g) and (k), 146.58 (4) and 227.11 (2), Stats.

Comparison with Federal Regulations

There are no federal regulations that are governing or applicable to these rules.

Entities Affected by the Rule

The citizens of Wisconsin, counties, emergency medical technicians, and ambulance service providers.

Staff Time Required

The department estimates that it will take approximately 450 hours to develop the proposed rules. The department will use the assistance of the Emergency Medical Services Advisory Board and the Board's stakeholder group to guide the content of the consolidated rule.

Insurance

Subject

Objective of the rule. The Office intends to work with interested parties, including life insurers and agents, and other federal and state governmental bodies and agencies to develop a rule which will establish standards for supervision systems addressing compliance with the law in the sales of annuities.

Policy Analysis

Current law requires insurers, general agencies and independent agencies to maintain a system to supervise the sale of annuities to seniors that is reasonably designed to achieve compliance with the law. In addition under current law a violation by an agent in the course of making any annuity sale is imputed to the insurer and insurance agency the agent represents. Finally current law requires all licensed insurers and intermediaries to maintain methods and practices in conducting business such that the public interest is protected. None of these current requirements provide specific standards for supervision systems addressing compliance with the law in the sales of annuities. This rulemaking process is proposed in order to develop a rule that provides specific standards for supervision systems.

Statutory Authority

The statutory authority for this rule is ss. 601.41 (4), 601.42, 611.13, 611.20, 613.13, 613.20, 614.13, 614.20, 618.12, 618.37, 628.04, 628.10, 628.34, 628.347 and 628.38, and ch. 645, Wis. Stats.

Staff Time Required

2000 hours. The Office also will invite interested parties, including life insurers and agents, and other governmental bodies and agencies to contribute to the deliberations concerning the development of the rule.

Entities Affected by the Rule

The proposed rule will affect insurers, general agencies and independent agencies. It will also affect individual insurance intermediaries.

Comparison with Federal Regulations

The Office expects that the proposed rule will be drafted so as to coordinate with regulations of the National Association of Security Dealers (“NASD”) that address supervision systems for the sales of securities. Some insurance products, particularly variable annuities, are subject to those rules.

The NASD is a self–regulating organization established under the Securities Exchange Act of 1934. NASD Conduct Rule 3010, requires members (security brokers) to establish a system and develop, maintain, and implement written procedures to supervise the activities of each registered representative, reasonably designed to achieve compliance with applicable securities laws, regulations and association rules. Conduct Rule 3010 requires, at a minimum that members designate qualified supervisors with appropriate authority to monitor and review compliance requirements with each registered representative, to implement appropriate

practices such as records inspections and compliance audits to detect violations, and to take appropriate action. Members must periodically review the supervisory systems and procedures to ensure they are current and adequate.

Public Instruction

Subject

Objective of the rule. Modify s. PI 11.36 (6), relating to specific learning disabilities as required by federal law and modify PI 11.36 (11), relating to significant developmental delay as permitted by federal law.

Policy Analysis

As specified in IDEA, the evaluation procedures relating to the identification of specific learning disabilities provide that: 1) States may not require the use of significant discrepancy as part of a determination of SLD, 2) States must permit the use of a process based on a child's responses to scientifically–based intervention as part of its determination of a SLD, and 3) States may permit the use of other alternative research–based procedures to determine whether a child has a SLD. IDEA also added reading fluency skills as an area of identification for SLD.

IDEA also permits the identification of children with significant developmental delay through the age of nine rather than six.

Statutory Authority

Sections 115.76 (5) (a) 10. and 227.11 (2) (a), Stats.

Entities Affected by the Rule

LEAs that provide programs to children with disabilities in Wisconsin.

Comparison with Federal Regulations

The modified rule will parallel the new federal requirements for SLD under 20 U.S.C. 1401 (30) and 1414 (b) (6) and will be consistent with federal authority related to SDD under 20 U.S.C. 1401 (3) (b).

Staff Time Required

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Revenue

Subject

Chapters Tax 61 and Tax 63, relating to technical improvements in both chapters and to the implementation of changes to Wisconsin Lottery retailer billing terms, consistent with Section 2427 b. of 2005 Act 25, as it amends s.565.10 (15), Stats.

Entities Affected by the Rule

Retail organizations that sell lottery products will be affected.

Comparison with Federal Regulations

The department is not aware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Policy Analysis

Objective of the rule. The objectives of the proposed rule are to create provisions for future billing terms to be offered to retailers consistent with Section 2427b of 2005 Act 25, to offer additional shipping options at cost to the retailer in situations where the retailer desires additional shipping options, and to remove minor requirements that currently exist in the Retailer Performance Program (RPP) which the Lottery has determined are not consistent with the program intent. And last, the proposal will also create rules that satisfy the voluntary non–disclosure requirements of 2003 Act 145, and will also clean up minor technical problems in both chapters.

Current policies are being updated to align to new statutory law, and to provide better customer service options to the retailers of Lottery product.

Statutory Authority

Sections 227.11 (2) (a), 565.02, and s. 565.10 (15), Stats.

Staff Time Required

It is estimated that approximately 140 hours of staff time will be required to develop this rule order.

Workforce Development

Subject

Chapter DWD 56, child care rates

Policy Analysis

Each county or tribal agency annually establishes maximum reimbursement rates for child care services provided to eligible individuals by licensed and certified child care providers, unless the Department sets multi–county rates. The Department or each county sets the rates based on a survey of all licensed providers that determines the child care prices the providers charge the general community. The maximum reimbursement rate for licensed providers is set so that at least 75% of the number of places for children within the licensed capacity of all child care providers in the county can be purchased at or below that maximum rate. Separate maximum rates are set for licensed group child care centers, licensed family child care centers, Level I certified family child care providers, and Level II certified family child care providers. Separate maximum rates are also set for children in various age groupings. The current rates are multi–county rates set by the Department in 2006.

In past years, the adjusted rates based on the annual survey have generally become effective January 1 of the new year. The Department has issued an emergency rule that provides that the rates will not be adjusted for the year beginning January 1, 2007, and the rates effective on December 31, 2006, will remain in effect. This is the corresponding proposed permanent rule.

Statutory Authority

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

Entities Affected by the Rule

Families who receive assistance under the child care subsidy program and child care providers who care for children of these families

Comparison with Federal Regulations

Under 45 CFR 98.43, a state must certify that state payment rates for the provision of child care services funded under the Child Care and Development Fund are sufficient to ensure equal access to child care services for eligible families as families not eligible for child care assistance. At a minimum,

the state must show that it considered 3 key elements in determining that its child care program provides equal access for eligible families: 1) Adequate payment rates based on a local market rate survey conducted no earlier than two years prior to the effective date of the current plan; 2) Choice of the full range of categories and types of providers; and 3) Affordable copayments.

In the commentary issued with the regulation, the

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

Staff Time Required

60 hours.

Submittal of rules to legislative council clearinghouse

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

Commerce

On January 26, 2007, the Department of Commerce submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Section 227.14 (4m) and 227.17, Stats.

The proposed rules affect chs. Comm 5 and 20, relating to dwelling contractor certification.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on February 27, 2007. The department's Safety and Buildings Division is primarily responsible for this rule.

Contact Person

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

Commerce

On January 29, 2007, the Department of Commerce submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Section 227.14 (4m) and 227.17, Stats.

The proposed rules affect ch. Comm 67, relating to rental unit energy efficiency standards.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on March 15, 2007. The department's Safety and Buildings Division is primarily responsible for this rule.

Contact Person

Joe Hertel
Program Manager
608–266–5649
jhertel@commerce.state.wi.us

Workforce Development

On January 31, 2007, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Sections 108.02 (12) (f), 108.14 (2) and 227.11 (2), Stats.

The proposed rules affect chs. DWD 100 to 150, relating to unemployment insurance technical corrections.

Agency Procedure for Promulgation

Pursuant to s. 227.16 (2) (b), Stats., a public hearing is not required because the proposed rule brings an existing rule into conformity with a statute that has been changed. The organizational unit responsible for the promulgation of the proposed rules is the DWD Unemployment Insurance Division.

Contact Person

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

Workforce Development

On January 31, 2007, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Sections 106.01 (9) and 227.11 (2), Stats.

The proposed rules affect ch. DWD 295, relating to enforcement of apprenticeship agreements and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 28, 2007. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Workforce Solutions.

Contact Person

Elaine Pridgen
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Rule–making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 07–004]

(Reprinted from 1/31/07 Wis. Adm. Register)

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed new rule, Chapter ATCP 106, Wis. Adm. Code, relating to Price Gouging During and Emergency.

DATCP will hold three public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Friday, March 16, 2007 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to kevin.leroy@datcp.state.wi.us or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4928 or emailing kevin.leroy@datcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to:

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

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

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by February 13, 2007, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4928. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearing Dates and Locations:

Tuesday, February 20, 2007

2:00 p.m. to 4:00 p.m.

DATCP Northwest Regional Office

3610 Oakwood Hills Pkwy

Eau Claire, WI 54701–7754

Wednesday, February 21, 2007

9:30 a.m. to 11:30 a.m.

DATCP Northeast Regional Office

Room 152A

200 N Jefferson Street

Green Bay WI 54301

Tuesday, February 27, 2007

9:30 a.m. to 11:30 a.m.

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room (CR–106)

Madison, Wisconsin, 53718–6777

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

This rule implements s. 100.305, Stats. (created by 2005 Wis. Act 450), which prohibits price gouging in sales of consumer goods or services during an emergency declared by the Governor. This rule includes standards for determining what constitutes illegal price gouging.

Statutory Authority: ss. 93.07 (1), 93.15 and 100.305 (3), Stats.

Statutes Interpreted: ss. 93.06 (1) and (9), 93.15, 93.16 and 100.305, Stats.

The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) is responsible for administering the price gouging prohibition under s. 100.305, Stats. Section 100.305, Stats., prohibits sellers from selling “consumer goods or services” at wholesale or retail at “unreasonably excessive prices” if the Governor, by executive order, has certified that the state or a part of the state is in a “period of abnormal economic disruption” due to an emergency. An emergency may include, for example, a destructive act of nature, a disruption of energy supplies that poses a serious risk to the public health or welfare, a hostile action, or a strike or civil disorder.

DATCP has broad general authority, under s. 93.07 (1), Stats., to adopt rules to implement laws under its jurisdiction. Under s. 100.305 (3), Stats., DATCP is specifically required to adopt rules defining what constitutes an “unreasonably excessive price” for purposes of the price gouging prohibition under s. 100.305, Stats.

Under ss. 93.06 (1) and (9) and 93.14 to 93.16, Stats., DATCP may investigate possible rule violations, and may require persons to provide documents, testimony and other evidence related to its investigation. Under s. 93.15, Stats., DATCP may by general order (rule) require persons to answer DATCP questions and submit documents for inspection.

Rule Content

Under this rule, a seller may not sell a consumer good or service in a declared emergency area during a declared emergency period at a price that is more than 10% above the highest price at which the seller sold like consumer goods or services to like customers in the relevant trade area during the 60–day period immediately preceding the emergency declaration. A seller may charge a higher price if the seller can prove, based on evidence in the seller’s possession at the time of sale, that any of the following apply:

The higher price does not exceed the seller’s cost plus normal markup. “Normal markup” means the percentage markup, over the seller’s cost, which the seller regularly used in sales of like goods or services to like customers in the relevant trade area during the 60–day period immediately preceding the emergency declaration. This allows sellers to pass on bona fide cost increases.

The higher price is required by law. For example, a seller may prove that the higher price is required to comply with Wisconsin’s Unfair Sales Act (“minimum markup law”), s. 100.30, Stats.

The Governor's emergency declaration directly or impliedly exempts the sale from coverage under the emergency declaration.

Under this rule, DATCP may require a seller to submit written, documented answers to DATCP questions related to the seller's compliance with this rule, including information related to any of the following:

The highest price at which the seller sold a consumer good or service to like customers in the relevant trade area during the 60-day period immediately preceding the emergency declaration.

The scope of the relevant trade area.

Any defenses claimed by the seller under this rule.

Other information relevant to DATCP's investigation.

Federal and Surrounding State Regulations

Federal Law

At various times in United States history, the federal government has imposed price controls. There are no federal "price gouging" prohibitions currently in effect. However, there are federal laws that set or limit prices for certain products or services in certain sectors. Some of these laws may preempt state "price gouging" provisions related to the federally-regulated products or services. For example, state law may not regulate interest rates charged by federally chartered banks, or certain prices charged by certain federally regulated common carriers. The scope and effect of federal regulation varies by industry sector, and is highly specific to individual federal programs.

Other States

Many states have prohibited price gouging during declared periods of emergency. Most of those states prohibit prices above pre-emergency prices, except that most states allow sellers to pass on increased costs. Four states prohibit increased markups over cost, and 6 states cap price increases at some percentage such as 10% or 25%.

Nineteen states prohibit prices that are "unconscionably excessive," "exorbitant," "unjustified," or "grossly excessive" without defining those terms or establishing more specific standards. However, the New York attorney general found that New York's broad prohibition against "unconscionably excessive" prices was unworkable without more specific standards.

The states surrounding Wisconsin have the following regulations:

Illinois, on September 2, 2005, adopted an emergency rule (now expired) which prohibited "unconscionably high prices for petroleum products."

Indiana prohibits price gouging in the sale of fuel. Price gouging occurs if a retailer charges a price that grossly exceeds the average price at which the fuel was readily available during the 7 days immediately preceding the declared emergency and the increase is not attributable to cost factors to the retailer.

Iowa regulates prices on "merchandise needed by disaster victims." The Iowa regulation prohibits "unjustified prices" during times of disaster and recovery (60 day maximum) in a declared disaster zone.

Michigan's consumer act prohibits, among other things, a price that is "grossly in excess" of the price at which similar property or services are sold.

Minnesota does not regulate price gouging.

Ohio prohibits, during a state of emergency, prices that are substantially higher than "the price at which the goods or

services were readily obtainable during the 30 days immediately preceding the state of emergency" or "the average price of the goods or services during the 30 days immediately preceding the state of emergency."

Business Impact Analysis

Depending on the scope of a declared emergency, this rule could conceivably affect nearly every business that sells consumer goods in the state (whether at wholesale or retail). A declared emergency may be statewide or localized in scope, and may be broad-based or confined to certain economic sectors. The impact of this rule will vary accordingly.

This rule could have a substantial impact on a wide array of businesses. But it is not possible to predict the impact on individual businesses or on business generally.

Whenever it applies in an emergency, this rule will limit the prices that may be charged by affected businesses. This rule prohibits prices that are more than 10% higher than pre-emergency prices, unless sellers can document that their higher prices do not exceed their cost plus normal markup. Sellers are thus free to pass on relevant cost increases, if they can document those increases.

This rule applies only when the Governor, by executive order, issues an emergency declaration. The emergency declaration determines the scope of coverage, and may exempt certain business sectors from coverage. This rule applies only for the period of time that the emergency declaration remains in effect.

This rule provides some latitude for price adjustments in response to supply and demand, and allows sellers to pass on bona fide cost increases. However, this rule does ultimately set limits on the prices that manufacturers, wholesaler distributors and retailers may charge. Some sellers may withhold goods or services from the market rather than sell at those limited prices. Retailers may benefit from wholesale price limitations, but may suffer from wholesaler decisions to withhold goods or services from distribution.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has adopted a separate rule outlining its small business enforcement policy (see ATCP 1, subch. VII). DATCP will follow that rule in the administration of this price gouging rule. DATCP will, to the maximum extent feasible, seek voluntary compliance with this price gouging rule.

This rule first applies to small businesses 2 months after it first applies to other businesses, as required by s. 227.22 (2) (e), Stats. This rule will not apply to small businesses during declared emergencies that fall within that 2-month period, but will apply to small businesses during subsequent declared emergencies. If a declared emergency period starts before the small business effective date, but extends beyond the small business effective date, this rule will apply to small businesses for that portion of the emergency period that occurs after the small business effective date.

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 07-006]

(Reprinted from 1/31/07 Wis. Adm. Register)

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on proposed amendments to chapters ATCP 60, 69, 77, 80 and 82, Wis. Adm. Code, relating to safe production, processing, distribution and sale of milk and dairy products.

DATCP will hold four public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Monday, March 19, 2007, for additional written comments. Comments may be sent to the Division of Food Safety at the address below, by email to debbie.mazanec@datcp.state.wi.us, or online at: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4712 or emailing debbie.mazanec@datcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

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

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by February 12, 2007, by writing to Deb Mazanec, Division of Food Safety, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4712. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearing Dates and Locations

Tuesday, February 20, 2007

10:00 a.m. to 1:00 p.m.

Appleton Public Library, Room C
225 N. Oneida Street
Appleton, WI 54911

Wednesday, February 21, 2007

10:00 a.m. to 1:00 p.m.

State of Wisconsin Office Building, Room 105
718 W. Clairemont Avenue
Eau Claire, WI 54701

Friday, February 23, 2007

10:00 a.m. to 1:00 p.m.

Green County Agriculture Building Auditorium
2841 6th Street
Monroe, WI 53566

Monday, February 26, 2007

1:00 p.m. to 4:00 p.m.

Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive, Board Room (CR–106)
Madison, Wisconsin, 53718–6777

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

This rule updates current rules related to safe production, processing, distribution and sale of milk and dairy products. This rule affects dairy farms, dairy plants, milk haulers, milk testing laboratories, buttermakers, cheesemakers and others. Among other things, this rule:

Brings Wisconsin rules into conformity with the Interstate Pasteurized Milk Ordinance (“PMO”). Milk and fluid milk products must be produced in compliance with the PMO, in order for Wisconsin to be able to ship those products in interstate commerce.

Updates current rules to accommodate new dairy industry technology and practices.

Clarifies current statutory prohibitions against the sale of raw milk to consumers, consistent with administrative law judge decisions.

Clarifies some rule provisions, so they will be easier to read and understand.

Statutory Authority

Statutory authority: ss. 93.07(1) and (2), 93.09 (1), 93.12 (3) and (5), 97.09 (1) and (4), 97.20 (4), 97.21 (6), 97.22 (8), 97.24 (3), and 97.52.

Statutes interpreted: ss. 93.09, 93.12, 97.02, 97.03, 97.09, 97.12, 97.17, 97.175, 97.20, 97.21, 97.22, 97.24, 97.50, 97.52, 98.145 and 98.146.

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is responsible for administering Wisconsin food safety and labeling laws, including laws related to the safety of milk and dairy products. DATCP licenses and regulates dairy farms, dairy plants, milk haulers, milk testing laboratories and analysts, bulk milk weighers and samplers, and others. DATCP has broad authority to regulate these entities, to ensure safe and wholesome dairy products and fair business practices.

Milk and fluid milk products must be produced and distributed in compliance with “Grade A” standards under the Interstate Pasteurized Milk Ordinance (“PMO”). If Wisconsin fails to comply with the PMO, Wisconsin may be precluded from shipping milk and fluid milk products in interstate commerce. Under s. 97.24, Stats., DATCP must adopt “Grade A” rules that are in substantial accord with the PMO.

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules needed to interpret and implement laws under its jurisdiction. In addition, DATCP has the following rulemaking authority:

Under s. 93.07 (2), Stats., to prescribe forms used in connection with DATCP programs.

Under s. 93.09 (1), Stats., to adopt grading, packaging and labeling standards for food.

Under ss. 93.12 (3) and (5), Stats., to adopt rules for laboratories testing milk and dairy products.

Under s. 97.09 (1), Stats., to adopt food standards of identity, composition and quality.

Under s. 97.09 (4), Stats., to regulate the production, processing, packaging, labeling, transportation, storage, handling, display, sale, and distribution of food to protect the public from adulterated or misbranded foods.

Under s. 97.20 (4), 97.21 (6) and 97.22 (8), Stats., to regulate dairy plants, bulk milk tankers and dairy farms.

Under s. 97.24 (3), to adopt rules for the production, processing, pasteurization, distribution and testing of milk and dairy products. Rules for milk and fluid milk products must be in substantial accord with “Grade A” standards under the PMO.

Under s. 97.52, Stats., to establish sanitary standards for the production, handling and transportation, inspection and testing of milk and dairy products.

Background

The United States Food and Drug Administration (“FDA”) recently completed an audit of Wisconsin’s dairy regulatory

program. FDA requested a number of changes in current DATCP rules, to make the rules more fully consistent with the current (2005) version of the PMO. This rule makes changes requested by FDA. This rule also makes other changes to update and clarify current rules, and to accommodate changing dairy industry technology, organization and practices. The changes in this rule are, for the most part, technical in nature. However, some rule changes may require significant changes by some dairy businesses (see *Business Impact Analysis* below).

DATCP and others have proposed major reforms to modernize and streamline the PMO. However, those reforms will require action at the national level and by other states. In the meantime, Wisconsin must comply with existing PMO requirements.

Rule Content

Dairy Farms

This rule updates and modifies current rules related to dairy farms. Among other things, this rule does all of the following:

- Incorporates PMO requirements related to gravity flow manure handling systems and liquid manure storage.
- Clarifies milk hauler responsibilities relating to mixing, sampling, and testing milk shipments.
- Spells out standards and procedures related to Wisconsin's performance-based dairy farm inspection system.
- Updates drug residue action levels and safe levels, consistent with the PMO.
- Clarifies dairy plant and DATCP responsibilities relating to testing milk from dairy farms, and reporting test results.
- Spells out new requirements related to the safety of water used in milking and processing operations.
- Clarifies milk temperature monitoring and recording requirements, and requires dairy farms to keep milk temperature records for at least 6 months (extended from 90 days under current rules).

Clarifies drug residue testing procedures, including requirements confirmation of positive screening tests and rejection of milk shipments pending follow-up testing to show that drug contamination has been eliminated.

- Clarifies producer and installer responsibilities for obtaining DATCP review of dairy farm remodeling plans.
- Expands rule coverage to include all "milking animals," not just cows, sheep and goats.
- Expands current requirements related to dairy farm and dairy plant cooling systems.
- Clarifies the current statutory prohibition related to the sale of unpasteurized "raw milk" to consumers, consistent with administrative law judge decisions. Raw milk sales have been implicated in a number of serious food-borne disease outbreaks in Wisconsin and elsewhere.
- Eliminates current requirement related to dairy plant testing for coarse sediment in milk.

Dairy Plants

This rule updates and modifies current rules related to dairy plants. Among other things, this rule does all of the following:

Strengthens water safety requirements and clarifies that DATCP, rather than the dairy plant operator, must perform certain water safety tests.

Clarifies cleaning and sanitizing requirements.

Clarifies milk testing requirements, including drug residue testing requirements. Among other things, this rule clarifies

testing requirements for farms that milk directly to bulk milk tankers.

This rule eliminates coarse sediment testing requirements.

Updates and clarifies pasteurization standards, procedures and testing requirements.

Requires regular DATCP review of pasteurization records and "cleaned-in-place" equipment cleaning records.

Updates requirements related to calibration of automated milk component testing devices.

Updates dairy plant recordkeeping requirements. Dairy plants must retain certain cleaning and sanitizing records for at least 6 months. Dairy plants must keep for at least 3 years certain documents related to bulk milk shipments.

Milk Testing Laboratories

DATCP currently certifies laboratories that test milk, food or water for compliance with public health standards. This rule updates and clarifies current rules related to the certification of laboratories and lab analysts. Among other things, this rule:

Updates the list of tests for which certification is required.

Clarifies current certification and testing requirements related to drug residue testing in milk, including requirements for timely confirmation of positive screening test results.

Clarifies that test results reported by a certified laboratory are presumptively valid.

Milk Haulers and Bulk Milk Tankers

This rule updates and modifies current requirements related to milk haulers and bulk milk tankers. Among other things, this rule does all of the following:

Establishes standards for bulk milk tanker cleaning facilities at dairy plants.

Requires dairy plants to keep bulk milk tanker cleaning and sanitizing records for 15 days, rather than 90 days. When a dairy plant operator cleans a bulk milk tanker, the operator must remove the cleaning tag from the last cleaning and keep the removed tag for at least 15 days.

Clarifies that out-of-state bulk milk tankers with grade A permits from other jurisdictions are not required to hold Wisconsin grade A permits.

Requires grade A permit numbers to be clearly displayed on bulk milk tankers.

Clarifies the responsibilities of milk haulers (bulk milk weighers and samplers) related to weighing, measuring, and sampling milk shipments.

Buttermakers and Cheesemakers

This rule clarifies current professional licensing requirements for individuals engaged as buttermakers and cheesemakers. This rule gives license applicants more options for meeting training and experience qualifications.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP will request permission from the attorney general and revisor of statutes to incorporate the following standards by reference in this rule without reproducing the publications in full. This rule updates titles, publication dates, and supporting information for the following publications:

- "Grade A Pasteurized Milk Ordinance," published by the Food and Drug Administration, Public Health Service, U.S. Department of Health and Human Services (2005 Revision).
- "3-A Accepted Practices for the Design, Fabrication and Installation of Milking and Milk Handling Equipment," document #3A606-05, published by "3-A Sanitary Standards, Inc. (November 2002).

- “3–A Sanitary Standards for Farm Milk Cooling and Holding Tanks,” document #3A13–10, published by 3–A Sanitary Standards, Inc. (November 2003).
- “3–A Accepted Practices for the Sanitary Construction, Installation, Testing, and Operation of High–Temperature Short–Time and Higher–Heat Shorter–Time Pasteurizer Systems,” document #3A603–07, published by 3–A Sanitary Standards, Inc. (November 2005).
- “3–A Sanitary Standards for Stainless Steel Automotive Transportation Tanks for Bulk Delivery and Farm Pick–Up Service,” document #3A05–15, published by 3–A Sanitary Standards, Inc. (November 2002).
- “Official Methods of Analysis of AOAC International,” published by AOAC International (18th Edition, 2005).
- “Milk and Dairy Beef Residue Prevention Protocol, 2005 Producer Manual of Best Management Practices,” published by Agri–Education, Inc.
- “Standard Methods for the Examination of Dairy Products, published by the American Public Health Association (17th Edition, 2004).
- “Compendium of Methods for the Microbiological Examination of Foods, published by the American Public Health Association (4th Edition, 2001).
- “Bacteriological Analytical Manual,” published by the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services (8th Edition, Revision A, 1998).
- “Manual for the Certification of Laboratories Analyzing Drinking Water,” published by the U. S. Environmental Protection Agency (5th Edition, 2005).
- “Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, the American Water Works Association and the Water Environment Federation (20th Edition, 1998).
- “Methods of Making Sanitation Ratings of Milk Supplies,” published by the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services (2005 Revision).
- FDA 2400 Series Laboratory Evaluation Forms, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (forms that are effective as of the effective date of this rule).

Copies of these publications will be on file with DATCP and the revisor of statutes. Rule *notes* explain how readers may obtain copies.

Fiscal Estimate

DATCP currently regulates dairy farms, dairy plants, bulk milk weighers and samplers, bulk milk tankers, milk testing laboratories, laboratory analysts, buttermakers and cheesemakers to protect consumers and facilitate the interstate shipment of Wisconsin grade A milk and dairy products.

This rule will not have a significant fiscal impact on state government. This rule updates current rules, but does not make major changes that will increase state government costs. This rule does not change current license fees, and does not have any impact on current state revenues.

Business Impact

DATCP currently regulates dairy farms, dairy plants, bulk milk weighers and samplers, bulk milk tankers, milk testing

laboratories, laboratory analysts, buttermakers and cheesemakers to protect consumers and facilitate the interstate shipment of Wisconsin grade A milk and dairy products. Current regulations have an important impact on dairy industry operations, including small business operations. Most dairy farms, and some dairy processing operations, qualify as “small businesses” under s. 227.114, Stats.

This rule makes a large number of technical changes to existing regulations. For the most part, however, this rule will not have a significant impact on affected businesses.

Some rule changes may have a significant impact on some affected businesses. For example, this rule mandates certain pasteurization and cooling requirements that may require some dairy plants to install new or remodeled equipment. DATCP estimates that no more than 5 dairy plants will be affected by this particular requirement. The actual impact will depend on variable factors related to processing operations, current equipment and plant size. This rule delays the effective date of the requirement by one year, so that affected dairy plants will have time to make the necessary changes.

This rule changes current recordkeeping requirements, but the changes should not impose a significant burden on affected businesses. This rule will not require affected businesses to obtain any new professional skills or services.

Federal Regulations

FDA administers the PMO in cooperation with the National Conference on Interstate Milk Shipments (NCIMS). NCIMS, a cooperative organization of states, develops and adopts PMO provisions subject to approval by FDA. FDA audits state compliance, and may “de–list” individual milk shippers or entire states that fail to comply. Other states may refuse to accept milk shipments from “de–listed” states or shippers.

Wisconsin rules must be consistent with the PMO, in order for Wisconsin to ship milk and fluid milk products in interstate commerce. FDA has requested changes in the Wisconsin rules, to make them consistent with the current version of the PMO. This rule updates Wisconsin rules, so they will be consistent with the PMO.

The United States Department of Agriculture (USDA) recommends standards for non–fluid dairy products (such as cheese), and for “Grade B” milk used in the manufacture of those products. USDA evaluates state programs for consistency with its recommended standards. Unlike PMO standards for “Grade A” milk and fluid milk products, the USDA “Grade B” standards are not mandatory. However, Wisconsin and surrounding state rules are consistent with those standards.

USDA and the United States Environmental Protection Agency administer other programs (such as milk marketing orders, pesticide registration and water pollution regulations) that affect the operation of dairy businesses, but the PMO is the primary federal or interstate regulation relevant to this rule. Federal regulations in 21 CFR 1240 mandate pasteurization of milk and prohibit interstate sale of unpasteurized milk and fluid milk products.

Surrounding State Programs

Illinois, Iowa, Michigan and Minnesota are all members of the NCIMS. All 4 states have dairy regulations that are in substantial compliance with the PMO. They also have regulations for “Grade B” milk and non–fluid dairy products (such as cheese) that are substantially equivalent to USDA recommended standards.

Notice of Hearing
Commerce
[CR 07-007]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.63 and 101.645 Stats., as affected by 2005 Wisconsin Act 200 the Department of Commerce will hold a public hearing on proposed rules under chapters Comm 5 and 20 relating to certification of dwelling contractors and affecting small businesses.

The public hearing will be held as follows:

Date and Time:	Location
February 27, 2007	Conference Room 3C
10:00 a.m.	Thompson Commerce Center 201 West Washington Avenue Madison

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 March 9, 2007, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

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

Analysis

1. Statutes Interpreted.

Sections 101.63 and 101.645, Stats., and 2005 Wisconsin Act 200.

2. Statutory Authority.

Sections 101.63 and 101.645, Stats., and 2005 Wisconsin Act 200.

3. Related Statute or Rule. None.

4. Explanation of Agency Authority.

Section 101.63 (2m), Stats., empowers the department to promulgate certification rules regarding the financial responsibility of contractors who obtain building permits for work on dwellings. The enactment of 2005 Wisconsin Act 200 further directed the department to promulgate rules establishing educational obligations for contractors who obtain building permits for work on dwellings.

5. Summary of Proposed Rules.

Under current rules the department issues dwelling contractor financial responsibility certifications to businesses and entities that obtain building permits to perform work on one- and two- family dwellings no matter when the structure was initially constructed. The department is proposing to create a new separate certification, dwelling contractor qualifier, issued to an individual in order to fulfill the educational obligations established under 2005 Wisconsin Act 200. The qualifier certification term is proposed for one year and renewal of the certification is contingent upon the

holder obtaining 6 hours continuing education. The proposed rules also provide grandfathering provisions for obtaining the contractor qualification certification.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations.

The proposed rules address administrative issues unique to the department's rules. There are no existing or proposed federal regulations that address the activities to be regulated by the proposed rules.

7. Comparison with Rules in Adjacent States.

An internet search of the State of Illinois' website did not reveal the existence of a state-level licensing or certification for dwelling contractors or home builders.

An internet search of the State of Iowa's website revealed that there is not licensing or certification for building contractors or home builders just a simple registration program that does not require educational prerequisites.

The State of Michigan's website indicates that Michigan licenses residential builders and maintenance and alteration contractors. However, the qualifications for the license and its renewal do not appear to require the fulfillment of any educational obligations.

The State of Minnesota website indicates that Minnesota requires residential building contractor and remodeling companies to obtain a license. Each company must designate one individual as a qualifying person who must take the required examination and fulfill the 7-hours of continuing education required to renew the license.

8. Summary of Factual Data and Analytical Methodologies.

In developing the proposed rules the department reviewed the language of 2005 Wisconsin Act 200 together with the existing laws under ss. 101.63 and 101.654, Stats. and the existing administrative rules under s. Comm 5.31. The department also received input from the statutorily-created Contractor Certification Council. The council's composition reflects a variety of organizations whose memberships include many types of small businesses. The department utilizes advisory councils to gather information on potential impacts in complying with both the technical and administrative requirements of its codes. A responsibility of council members is to bring forth concerns their respective organizations may have with the proposed rules, including concerns regarding economic impacts. (Copies of the council meetings summaries are on file in Safety and Building Division.)

The Contractor Certification Council is comprised of:

Craig Rakowski, Wauwatosa, Wisconsin Builders Association

Jay Statz, Middleton, National Association of the Remodeling Industry

Joseph Welch, Pewaukee, Wisconsin State Council of Carpenters

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report.

The proposed rules implement the mandates imposed by 2005 Wisconsin Act 200. The Act establishes educational obligations for contractors who need to obtain building permits involving work on one- and two- family dwellings. Currently, a building permit is required for the construction of every new one- and two- family dwelling. The necessity to obtain a building permit for alterations and additions to existing dwellings is at the discretion of each municipality in terms when, if and for what type of work a building permit is required before starting the project. In light of this, the Act

and the proposed rules potentially affect a wide variety of contractors and trades, including home builders and contractors, remodeling businesses and roofing contractors. The cost of the department's proposed annual contractor certification is \$30. The renewal of the certification is contingent upon the holder obtaining at least 6 hours of continuing education. The continuing education, upon approval by the department, can be provided by anyone. The fee, if any, for a continuing education course or seminar is left to the discretion of the course/seminar provider. The department does not believe that the proposed rules will increase the effect on small businesses over that imposed by the Act.

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

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

Environmental Assessment

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

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

As required under 2005 Wisconsin Act 200 beginning on January 1, 2008 all certified contractors needing to obtain building permits to undertake work on a one– and two– family dwellings will have had to fulfill educational course work unless grandfathered. The renewal of their certifications will be contingent upon the fulfillment of continuing education obligations. The type of businesses affected by the Act and the proposed administrative rules include builders, remodelers and roofers.

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

There are no reporting or bookkeeping procedures required for compliance with the rules.

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

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

4. Rules have a significant economic impact on small businesses.

No. Rules not submitted to Small Business Regulatory Review Board.

Fiscal Estimate

Under current rules the department issues dwelling contractor financial responsibility certifications to businesses and entities that obtain building permits to perform work on one– and two– family dwellings. The department is

proposing to create a new separate certification, dwelling contractor qualifier, issued to an individual in order to fulfill the educational obligations established under 2005 Wisconsin Act 200. Currently, the department has issued 10,550 dwelling contractor financial responsibility certifications. It is anticipated that some contracting businesses and entities may desire to have more than one individual hold the qualifier certification. It is estimated that 10 percent of the businesses may employ this strategy. In light of this, the department estimates that it will issue approximately 11,600 qualifier certifications annually. The fee for the qualifier certification is proposed to be \$30. This will generate \$348,000 in annual revenue. The proposed rules will also decrease the fee for the dwelling contractor financial responsibility certifications by \$5.00. This will decrease annual revenue by \$52,000.

The department believes that the workload generated by issuing and administering the new qualifier certification can be absorbed into current staffing levels and functions.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267–0297, or Email at carol.dunn@wisconsin.gov.

Notice of Hearing Commerce [CR 07–008]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1) and (15), and 101.122, Stats., the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 67, relating to rental unit energy efficiency standards.

The public hearing will be held as follows:

March 15, 2007	Conference Room 3C
10:00 a.m.	Thompson Commerce Center
	201 West Washington Avenue
	Madison

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 March 29, 2007, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Joe Hertel, at the Department of Commerce, P.O. Box 2689, Madison, WI 537701–2689, or email at jhertel@commerce.state.wi.us.

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

Analysis

1. Statutes Interpreted: ss. 101.02 (1) and (15), 101.122 and 101.19 (1) (i), Stats.
2. Statutory Authority: ss. 101.02 (1) and (15), 101.122 and 101.19 (1) (i), Stats.
3. Related Statute or Rule. None.
4. Explanation of Agency Authority.

Under sections 101.02 (1) and (15), Stats., the Department has authority to protect public health, safety, and welfare, at public buildings and places of employment, by promulgating and enforcing requirements for construction and maintenance of those facilities. Under section 101.122, Stats., the Department also has the responsibility to develop minimum energy efficiency requirements for rental units. The energy efficiency requirements must be met before the ownership of a rental unit may be transferred. Under section 101.122 (2) (e), the Department must review the administrative rules adopted under this section of the statutes every five years to determine whether new energy conservation technologies should be included under chapter Comm 67. Also, under s. 101.19 (1) (i), Stats., the Department may fix and collect fees for inspecting and certifying rental units as specified in s. 101.122, Stats., and the Department proposes to reduce the fees, which will more closely equal the cost of providing the services.

5. Summary of Proposed Rules.

The last revision to chapter Comm 67 was in 1999 and included language in response to legislation. This current review and update includes a repeal and recreation of the requirements to improve clarity, revise the rules in accordance with the standard rule development format, reduce the number of department forms that are required to be submitted to show compliance with the code and reduce the fees, which will more closely equal the cost of providing the services.

The following are the major changes proposed in the revisions to chapters Comm 2 and Comm 67:

Modify the fees under chapter Comm 67 by eliminating the fees for application for exemptions, stipulations and waivers and adjusting the fee for certification stamps. These fee changes will offset program costs. The maximum fee for performing an inspection will also be eliminated. Private inspectors will establish their fees and the department will charge fees as specified under s. Comm 2.04 relating to miscellaneous inspections and investigations. [Comm 2.35]

Reorganize all of the requirements under Comm 67 by grouping them into subchapters relating to application, definitions, administration and enforcement, and technical provisions.

Eliminate the cost payback exemption because the minimum technical provisions are already based on achieving a 5-year cost payback and compliance with these requirements are now based on the life time of the building. Allowing an exemption from compliance with the code is not within the intent of the code. [Requirements formerly under s. Comm 67.06]

Modify the definitions for consistent use under the chapter. [Comm 67.04]

Clarify the definition of “owner-occupied” by stating the owner must occupy a dwelling unit exclusively as the primary or secondary residence within the first year immediately after the date of transfer of the dwelling unit. It also clarifies the owner may not claim more than 2 residences. This change is being proposed to recognize owners, who may own another dwelling used as a summer or winter residence. [Comm 67.04 (17)]

Clarify the administration and enforcement requirements relating to issuance of certificates, waivers, stipulations and satisfaction of compliance. [Comm 67.06]

Clarify the 2-year time period granted for a waiver starts from the date the waiver is validated, and include a requirement that states a rental unit with an expired waiver may not be transferred. [Comm 67.06 (3) (b) 2.]

Clarify that an owner of a rental unit must bring the unit into compliance with the energy requirements no later than one year after the stipulation was validated. [Comm 67.06 (4) (a) 1.]

Clarify the stipulation requirements, and include an option that the owner may bring the rental unit into compliance using either the code in effect at the time the stipulation was issued or using the current code requirements. [Comm 67.07 (2) (b) 2. and 67.06 (4) (a) 3.]

Reword the issuance requirements for certificates of compliance and stipulations to include the filing requirements previously covered under section Comm 67.08 (4) (g). [Comm 67.06 (2) and (4)]

Clarify the rules relating to insulation of box sills to permit foam plastic insulation to be used without the required thermal barrier. [Comm 67.11 (1) (c) and Table 67.11-B]

Clarify the rules relating to insulation of ducts and pipes to include vented attic spaces. Change the requirements relating to domestic hot water pipes to domestic water heater pipes, and require the insulation of only the supply pipes for noncirculating hot and cold water pipes in vented crawl spaces. [Comm 67.11 (1) (d) and Table 67.11-3]

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations.

An Internet-based search for “energy efficiency standards for rental dwelling units” in the *Code of Federal Regulations* (CFR) did not identify any existing federal regulations establishing energy efficiency requirements for the transfer of dwelling units used as rental property. However, it did identify the following existing federal regulation that awards grants to provide a weatherization assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve their health and safety.

10 CFR 440 – *Weatherization Assistance for Low-income Persons*

An Internet-based search for the referenced federal regulation of the 2003, 2004 and 2005 issues of the *Federal Register* did not identify any proposed changes to this regulation relating to the weatherization of dwellings owned by or occupied by low-income persons.

7. Comparison with Rules in Adjacent States.

An Internet-based search of adjacent states’ codes resulted in finding no similar code requirements for providing energy efficiency standards prior to the transfer of ownership of rental property. Minnesota, Michigan, and Iowa have energy conservation requirements for both commercial and residential buildings; however, these states do not require mandatory compliance with energy efficiency standards in existing rental units changing ownership.

Illinois does not have a statewide building code covering energy efficiency standards in rental units. In Illinois enactment of building codes is at the local municipal level.

8. Summary of Factual Data and Analytical Methodologies.

In accordance with s. 101.122 (2) (e), Stats., the Department is required to review the rental unit energy efficiency rules every 5 years to determine whether there are any new energy conservation technologies that would impact these rules. In developing the proposed rules, the Department reviewed the current rental unit energy conservation requirements along with the energy requirements specified under chapter Comm 22, Energy Conservation of the Uniform Dwelling Code (UDC) and the latest requirements under the International Energy Conservation Code (IECC) and did not find any new technologies. The Department’s review and

assessment process involved the participation of an advisory council. The members of the Rental Unit Energy Efficiency Code Council represented home inspectors, realtor's association and apartment owners. (A listing of the Council members is provided at the end of this analysis.)

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report

The rental unit energy efficiency rules impact any small business providing inspection services for compliance and any small business owning rental property that is proposed to be sold or transferred to a new owner where the rules under this chapter have not been applied prior to the transfer.

The Department believes the proposed rules would have no additional economic impact on the identified affected small business because no new technologies were identified and the existing technical rules were only clarified to improve enforcement and application. The administrative rules were also clarified to improve application and no additional reporting or bookkeeping requirements were developed. The cost to provide the additional insulation for ducts and pipes will have a minimal effect on small businesses. The fees for a stipulation and a waiver have been eliminated and the fee for a certification authorization stamp has been increased, and it is believed this change will provide cost savings to small businesses affected by these rules. An economic impact report as specified under s. 227.137, Stats has not been prepared.

10. Effect on Small Business

The proposed rules should have a minimal effect on small business.

Council Members and Representation

The proposed rules were developed with the assistance from the Rental Unit Energy Efficiency Advisory Council. The members of that citizen advisory Council are as follows:

<u>Name</u>	<u>Representing</u>
Rob Jens	Apartment Assn. of South-Central WI
Tom McKenna	WI Realtors Association
Kent Schwanke	WI Association of Home Inspectors

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

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:

Joe Hertel
Division of Safety and Buildings
Department of Commerce
P.O. Box 2689
Madison, Wisconsin 53701

Telephone (608) 266-5649
or TTY (608) 264-8777

Written comments will be accepted until march 29, 2007.

Initial Regulatory Flexibility Analysis

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

Any small business providing inspection services for compliance with the rental unit energy efficiency standards, and any small business owning rental property under the scope of these rules will be affected.

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

The proposed rules have no additional reporting or bookkeeping requirements.

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

No new skills are required.

4. Rules have a significant economic impact on small businesses.

No. Rules not submitted to Small Business Regulatory Review Board.

Fiscal Estimate

State Effect

The Safety and Buildings Division is responsible for administering and enforcing chapter Comm 67 relating to rental unit energy efficiency standards. The proposed rules change the Division's fees charged for administering and enforcing chapter Comm 67 by eliminating the \$25 fee for an application exemption and the \$50 fee charged for each stipulation and waiver issued by the Division. By eliminating the stipulation and waiver fees, the Division's internal fiscal processing would also be improved by eliminating the need to send rebates to the 61 local authorized agents who submit these fees to the agency.

The certification stamp fee will be raised from \$20 to \$30. While there will be a fiscal impact, the proposed rules will not create any additional workload costs.

Local Effect

Local municipalities authorized by the Department to issue certificates of compliance may enforce these rules, and will have the authority to offset any costs by charging appropriate fees.

Private Sector Effect

The provisions in chapter Comm 67 are to establish minimum energy efficiency standards for rental units that must be met before the ownership of a rental unit is transferred. The intent of the rules is to ensure that rental units in Wisconsin are constructed and maintained as to promote efficient energy use. The proposed changes are primarily to rules relating to administration and enforcement procedures; however, there are changes that will require the insulation of ducts and pipes located in vented attic spaces. It is assumed that for such rental units, it may cost up to \$200 to provide the required insulation. The Department anticipates few rental units would be affected. The elimination of the fees for stipulations and waivers will be a cost savings to owners who would otherwise be required to file and pay a fee for either of these situations.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or Email at carol.dunn@wisconsin.gov.

Notice of Hearing
Workforce Development
(Apprenticeship)
[CR 07-010]

NOTICE IS HEREBY GIVEN that pursuant to ss. 106.01 (9) and 227.11 (2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider changes affecting Chapter DWD 295, relating to the enforcement of indenture agreements and affecting small businesses.

Hearing Information

Thursday, **February 28, 2007** at 1:30 p.m.

Madison

G.E.F. 1 Building, D203

201 E. Washington Avenue

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

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

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 106.01 (9) and 227.11, Stats.

Statutes interpreted: Sections 106.01 (5j), Stats.

Explanation of agency authority. Section 106.01 (5j), Stats., provides that the department may on its own motion, or on the complaint of any person, after due notice and a hearing, make findings and issue orders declaring any indenture at an end if it is proved at the hearing that any apprentice, employer or organization that is a party to the indenture is unable to continue with the obligations under the indenture or has breached the indenture.

Section 106.01 (9), Stats., provides that the department may investigate, fix reasonable classifications, issue rules and general or special orders and, hold hearings, make findings and render orders upon its findings as shall be necessary to carry out the intent and purposes of s. 106.01, Stats. Orders issued are subject to review under ch. 227, Stats.

Summary of the proposed rules. The current procedure for enforcement of an indenture agreement allows any person alleging that an indenture has not been complied with to file a complaint with the department. The department may investigate the complaint and attempt to resolve it by conference, conciliation, and persuasion. If the department is unable to resolve the complaint by conference, conciliation, or persuasion, it notifies the parties. If the complaint requested that the department cancel the indenture agreement, the notice informs the parties that the agreement will be cancelled 20 days from the date of the notice, unless any party receiving the notice makes a request in writing for a hearing on the matter.

The department, the Apprenticeship Advisory Council, and apprenticeship customers agree that there is a timeliness problem with the current procedure. The current conciliation

process takes 5-6 months and the full appeal process takes 9 months to one year. During this time, apprentices stay in the same apprenticeship status they are in at the time of the appeal. If in an active status, apprentices who have failed school still attend school, and apprentices who have demonstrated that they are not capable of doing the work still need to be placed at job sites.

The proposed rule repeals the conference, conciliation, and persuasion provision. If a party to an indenture wants to cancel the contract, the department will send an intent to cancel letter. The apprentice has 20 days to object and explain why the contract should not be cancelled. If the department receives a timely objection, it will conduct an investigation. If the investigation supports cancellation, the apprentice will be promptly cancelled. The apprentice may appeal the decision but the apprenticeship will remain cancelled throughout the appeal process.

The proposed rule will also require that a hearing be transcribed and allow a party to obtain a copy of the transcript by purchasing a copy from the transcription agency. The current rule does not require transcription unless a written request is made by any party. However, under current practice, the hearing examiners generally request a transcription. A written transcript also supports administrative review. In addition, the proposed rule will replace the term "division" with "department." The current rule refers to the division of apprenticeship and training, which no longer exists.

Summary of factual data and analytical methodologies. Before presenting the rule for revision, the Apprenticeship Advisory Council and the Bureau of Apprenticeship Standards presented the proposed rule to apprenticeship customers through the State Committee process. Representatives from key organizations supported this change, including: Associated Builders and Contractors; AGC of Wisconsin; AGC of Milwaukee; National Electrical Contractors Association, both the State Chapter and the Milwaukee Chapter; Mechanical Contractors of Wisconsin; Sheet Metal Employer Association; United Brotherhood of Carpenters--Southern District; IBEW--all locals; Ironworkers--both locals; Laborers District Council; Sheet Metal Workers; Steamfitters--all locals; Sprinkler Fitters Local 183; State AFL-CIO; and Painters & Decorators District Council.

Comparison with federal law. Federal law provides that apprenticeship programs and apprentice agreements may be registered with the federal Department of Labor (DOL) or a recognized state apprenticeship agency that has been properly constituted under acceptable law or executive order and has been approved by DOL for state registration or approval of local apprenticeship programs and agreements for federal purposes. Complaints arising under an apprentice agreement may be submitted to the appropriate authority. A state apprenticeship agency may adopt a complaint review procedure that differs from the federal procedure.

The federal complaint procedure provides that a complaint shall be submitted within 60 days of the final local decision and shall set forth the specific matter complained of, together with all relevant facts and circumstances. DOL or the recognized state agency shall render an opinion within 90 days after receipt of the complaint. During the 90-day period, DOL or the state agency shall make reasonable efforts to effect a satisfactory resolution between the parties involved.

Comparison with rules in adjacent states. In Illinois, Iowa, and Michigan, the U.S. Department of Labor resolves complaints under apprentice agreements pursuant to 29 CFR 29.1.

In Minnesota, complaints are resolved by the state apprenticeship agency. The state apprenticeship director conducts the initial investigation and issues a determination. If any person aggrieved by the decision files an appeal within 10 days of the date of service of the notice of decision, the agency appoints a hearing board composed of 3 members of the apprenticeship advisory council. The hearing board holds a hearing on the appeal and submit a recommended decision to the agency commissioner. The commissioner may adopt the recommended decision of the hearing board or disregard the decision and prepare a decision based on the findings of fact. Any person aggrieved by the agency decision may appeal to circuit court.

Effect on small businesses. The proposed rule affects small businesses as defined in s. 227.114 (1), Stats. The changes in the proposed rule will allow complaints under an indenture agreement to be resolved more quickly and without apprentices remaining in the apprenticeship pending the determination. This will relieve businesses of the hardship of maintaining apprentices who have demonstrated that they are not capable of doing the work during a lengthy appeal process. The department's small business regulatory coordinator is Jennifer Jirschele, (608) 266–1023, jennifer.jirschele@dwd.state.wi.us.

Fiscal Effect

The proposed rule simplifies the procedures for

enforcement of an indenture agreement. It does not have a fiscal effect.

Contact Information

The proposed rules are available at the web site <http://adminrules.wisconsin.gov> by typing “indenture agreement” in the search engine. This site allows you to view documents associated with this rule’s promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting:

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

Written comments. Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than March 1, 2007, 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 – Administrative Rules for further information on a particular rule.

Agriculture, Trade and Consumer Protection

(CR 05-013)

Ch. ATCP 50, relating to agricultural nutrient management.

Commerce

(CR 06-113)

Ch. Comm 104, relating to woman-owned business certification program.

Controlled Substances Board

(CR 06-058)

Ch. CBS 2, relating to the scheduling of two schedule I controlled substances under ch. 961, Stats.

Controlled Substances Board

(CR 06-059)

Ch. CBS 2, relating to the scheduling of two schedule I controlled substances under ch. 961, Stats.

Occupational Therapists Affiliated Credentialing Board

(CR 06-115)

Ch. OT 3, relating to continuing education waivers.

Optometry Examining Board

(CR 06-116)

Chs. Opt 1 and 3 to 8, relating to examinations, endorsement, delegation, TPA-DPA, renewal and continuing education relating to optometrists.

Revenue

(CR 06-107)

Ch. Tax 9, relating to cigarette and tobacco products tax bad debt deductions.

Transportation

(CR 06-101)

Chs. Trans 141 and 156, relating to the automated processing partnership system program and requiring motor vehicle dealers to process vehicle titles and registrations electronically, unless exempted by the department.

Workforce Development

(CR 06-032)

Ch. DWD 133, relating to the unemployment insurance and temporary help employers.

Workforce Development

(CR 06-138)

Ch. DWD 277, relating to notice to home care consumers and home care workers.

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