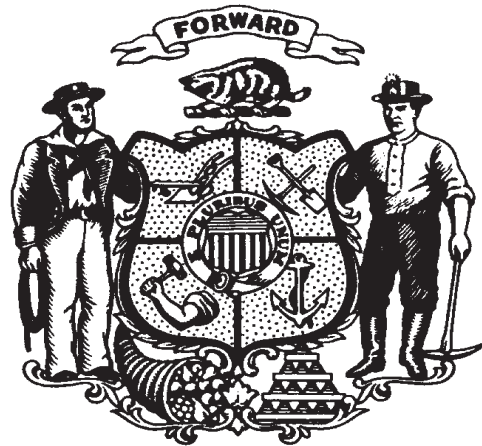


# Wisconsin Administrative Register

No. 642



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## Emergency Rules Now in Effect

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*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](http://www.legis.state.wi.us/rsb/code).*

*Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.*

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### Children and Families

#### *Family and Economic Security, Chs. DCF 101–153*

**EmR0906** — Rule adopted revising ss. **DCF 120.05, 120.07 and 120.08**, relating to emergency assistance for needy families.

#### **Finding of Emergency**

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

The recent large increase in foreclosures has caused tenants living in rental properties that are in foreclosure to lose their housing. Under the current rule, these tenants are not eligible for Emergency Assistance due to impending homelessness and would only be able to receive assistance if they became homeless. This emergency rule will allow these tenants to receive assistance for impending homelessness and avoid the additional expense and trauma of homelessness.

The current maximum payment amounts for Emergency Assistance due to homelessness and impending homelessness are insufficient to allow a smaller family to obtain or retain a permanent living accommodation. Increasing the payments

for smaller households immediately will help them obtain or retain a permanent living accommodation with fewer resources from other sources and may prevent homelessness for these families.

The current rule has no maximum payment amount for Emergency Assistance due to an energy crisis. All other categories of assistance have a maximum payment based on group size. This emergency rule requires that families first exhaust resources available through the Wisconsin Home Energy Program and sets a maximum payment amount for assistance available for Emergency Assistance due to energy crisis to make better use of the program's limited funds.

**Publication Date:** April 9, 2009  
**Effective:** April 22, 2009 through September 18, 2009  
**Hearing Date:** June 11, 2009

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### Children and Families

#### *Family and Economic Security, Chs. DCF 101–153 Early Care and Education, Chs. DCF 201–252*

**EmR0908** — Rules adopted amending s. **DCF 101.09 (3) (b) and creating ss. DCF 101.09 (3) (b) 1. b., 101.26 (3), and 201.08 (2) (g)**, relating to Wisconsin Works and Wisconsin Shares disregard of temporary census income.

#### **Finding of Emergency**

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

Disregarding income earned from temporary employment with the U.S. Census Bureau in determining Wisconsin Works and Wisconsin Shares eligibility and child care copayments is necessary for the public welfare to ensure Wisconsin has a broad pool of available workers to help ensure an accurate Census count, particularly in historically undercounted low-income neighborhoods. Census work is currently ongoing.

**Publication Date:** May 28, 2009  
**Effective:** June 1, 2009 through October 28, 2009

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### Commerce

#### *Fee Schedule, Ch. Comm 2*

**EmR0837** — Rule adopted revising s. **Comm 2.68**, relating to public swimming pool and water attraction plan review and inspection fees.

#### **Finding of Emergency**

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

1. Implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act necessitates most existing public swimming pools and water attractions to undergo physical



modifications to reduce the risk of entrapment at suction outlets.

2. The Virginia Graeme Baker Pool and Spa Safety Act has a compliance date of December 19, 2008.

3. The department estimates that 3,700 existing pools and water attractions will need to be modified in order to comply with the federal act.

4. The current department plan review fees and inspection fees under s. Comm 2.68 reflect an estimated average time and cost to provide those services. For the types of pool and water attraction modifications necessary to comply with the Virginia Graeme Baker Pool and Spa Safety Act, the department believes that the time and cost to provide the service will be below the averages reflected under the current fee structure of section Comm 2.68.

5. The department believes that a temporary fee reduction to facilitate plan review and inspection relative to the Virginia Graeme Baker Pool and Spa Safety Act is in alignment with the direction provided under s. 101.19, Stats., of keeping fees consistent with the costs of providing service.

**Publication Date:** December 15, 2008  
**Effective:** December 15, 2008 through May 13, 2009  
**Hearing Date:** January 8, 2009  
**Extension Through:** July 12, 2009

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**Commerce**

*Licenses, Certifications and Registrations, Ch. Comm 5 Wis. Commercial Building Code, Chs. Comm 60–66*

**EmR0904** — Rule adopted revising **ss. Comm 5.30 and 61.295**, relating to building contractor registration.

**Finding of Emergency**

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

1. Under Chapter 560 of the Statutes, the department of commerce is charged with facilitating the establishment and retention of business enterprises in Wisconsin, and with seeking closer cooperation and coordination between units of state government, so that the economy of the state may continue to develop fully and meet citizen and community needs.

2. Under Chapters 101 and 145 of the statutes, the department of commerce has oversight over the design, construction, alteration and maintenance of public buildings and places of employment, one- and two- family dwellings, public swimming pools and public water attractions in order to protect public safety, health and welfare and the waters of the state.

3. The department has proposed an administrative rule that would require the registration of various types of building contractors not already credentialed by the department under existing administrative rules. Under the proposed rules contractors must be registered with the department by January 1, 2010. A public hearing on that proposal was held on January 21, 2009.

4. The proposed rule has three main benefits to Wisconsin: first, it will enhance the department’s ability to communicate with and educate building contractors throughout the state about their obligations to limit safety and health risks for the

citizens of Wisconsin; second, it will enhance the ability of the department to cooperate and coordinate with the Department of Workforce Development relative to their administration of unemployment insurance and workers compensation insurance programs; and third, it will enhance the ability of the department to cooperate and coordinate with the Department of Revenue relative to their administration of the state income tax program.

5. Due to the current economic circumstances, the department has determined that the implementation for building contractor registration should be July 1, 2009 in order for the benefits to be in effect for the 2009 building construction season.

**Publication Date:** March 2, 2009  
**Effective:** March 2, 2009 through July 29, 2009  
 (except ss. Comm 5.30 (1) and 61.295 (2))  
**Effective:** July 1, 2009 through November 27, 2009  
**Hearing Date:** March 31, 2009

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**Commerce**

*Elevators, Escalators and Lift Devices, Ch. Comm 18*

**EmR0901**— Rule adopted repealing **s. Comm 18.1702 (8)**, relating to a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators that use smaller sized wire ropes.

**Finding of Emergency**

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

1. The recent revision of chapter Comm 18, Elevators, Escalators and Lift Devices, references and adopts the 2007 edition of the national standard ASME A17.1, developed by the American Society of Mechanical Engineers. Effective January 1, 2009, the regulations include a provision, s. Comm 18.1702 (8), that requires a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators using smaller sized wire ropes.

2. The department included the wear and fatigue monitoring system and protection device requirements in anticipation that the next edition of the national ASME A17.1 standard would incorporate a similar provision. The department developed s. Comm 18.1702 (8) based on code language being proposed by the national standard ASME A17.1 Committee.

3. The wear and fatigue monitoring system and the device to protect against suspension loss were not incorporated into the next version of the ASME A17.1. The ASME A17.1 Committee withdrew the section because of implementation concerns, and at this time it is unclear what the final section on suspension ropes and their connections in elevators will include.

4. Because the department adopts by reference the national standard ASME A17.1, it recognizes that without promulgating this emergency rule, there could be confusion in what constitutes recognized safe practices for a monitoring system and protection against suspension loss for electric traction elevators. The department believes that repealing s. Comm 18.1702 (8) will keep the Wisconsin code in alignment with the most current edition of ASME A17.1 and still promote safety.

**Publication Date:** February 5, 2009  
**Effective:** February 5, 2009 through July 4, 2009  
**Hearing Date:** March 2, 2009

**Publication Date:** May 4, 2009  
**Effective:** Section 1:  
5-4-09 through 7-1-11  
Section 2:  
9-1-09 through 7-1-11  
Section 3:  
1-10-10 through 7-1-11  
**Hearing Date:** June 10, 2009)

## Commerce

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

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

### Exemption From Finding of Emergency

Under the nonstatutory provisions of 2007 Wisconsin Act 205, the Department of Commerce is directed to issue emergency rules that implement provisions of the Act. The Act specifically states: "Notwithstanding section 227.24 (1) (a) and (3) of the statutes, neither the department of commerce or the department of health services is required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection."

The Act mandates the installation and maintenance of carbon monoxide alarms in buildings accommodating certain types of residential occupancies and within which fuel burning appliances are located. Residential occupancies include tourist rooming houses, bed and breakfast establishments, and any public building that is used for sleeping or lodging, such as, hotels, motels, condominiums, apartment buildings, dormitories, fraternities, sororities, convents, seminaries, community based residential facilities, home shelters, but not hospitals and nursing homes. The Act requires the installation of carbon monoxide alarms in new buildings as of October 1, 2008. The owners of existing buildings will have until April 1, 2010 to install the carbon monoxide alarms. The Act also provides for the omission of carbon monoxide alarms in certain instances which are further clarified by the administrative rules.

**Publication Date:** September 10, 2008  
**Effective:** October 1, 2008 through the date permanent rules become effective  
**Hearing Date:** October 14, 2008

## Financial Institutions — Banking

**EmR0907** — Rule adopted to create **Chapter DFI-Bkg 47 and to repeal Chapter DFI-Bkg 41**, relating to the transition from a registration system to a license system.

### Exemption From Finding of Emergency

The legislature by section 9117 of 2009 Wisconsin Act 2 provides an exemption from a finding of emergency for the adoption of the rule.

## Government Accountability Board

**EmR0902** — Rule adopted amending s. **GAB 6.05**, relating to filing campaign finance reports in electronic format.

### Finding of Emergency

The Government Accountability Board amends s. GAB 6.05, Wis. Adm. Code, relating to filing campaign finance statements in electronic format. The amended rule creates a uniform requirement and restricts registrants to an "electronic format" compatible with the Board's electronic filing system for filing campaign finance reports.

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists because the Board's January 18, 2008 decision to implement the use of a new electronic filing system, and the technical requirements thereof, conflicts with the technical electronic format filing permitted by the previous rule. In effect, the current electronic filing system cannot work without a uniform and restricted electronic format that is compatible with the new electronic filing system.

The Board adopts the legislature's policy findings of s. 11.001, Stats., emphasizing that one of the most important sources of information to voters about candidates is available through the campaign finance reporting system. The Board further finds that it is necessary to codify a uniform electronic format filing requirement to ensure the proper operation of the current electronic filing system so that the campaign finance information is available to voters. The amended rule, GAB 6.05, must be adopted immediately to ensure the public peace and welfare with respect to the administration of current and future elections.

**Publication Date:** February 5, 2009  
**Effective:** February 5, 2009 through July 4, 2009  
**Hearing Date:** March 20, 2009

## Health Services (2)

(Formerly Health and Family Services)

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

- EmR0832** — Rule adopted to repeal s. **HFS (DHS) 12.03 (15) and to create ss. HFS (DHS) 12.03 (20m), 12.115 and Table HFS (DHS) 12.115**, relating to background checks of individuals who provide personal care services, and affecting small businesses.

### Finding of Emergency

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



2007 Wisconsin Act 172 requires the department to specify by rule, the crimes, a conviction of which an entity must disclose to a client or a client's guardian before the caregiver provides the client with personal care services in the client's home. Act 172 also requires the department to define the term "substitute caregiver". Under s. 50.065 (2m) (d), Stats., as created by 2007 Wisconsin Act 172, the department created a list of crimes required and also as required defined the term "substitute caregiver".

Effective November 1, 2008, entities, including home health agencies and temporary employment agencies, are required under s. 50.065 (2m) (d), Stats., to disclose to the client or the client's guardian, the assigned caregiver's convictions of crimes specified by the department by rule.

**Publication Date:** October 20, 2008  
**Effective:** November 1, 2008 through March 30, 2009  
**Hearing Date:** January 6, 2009  
**Extension Through:** June 30, 2009

2. **EmR0834** — Rules adopted amending s. **HFS (DHS) 10.23 (2) (d) 2.**, relating to confidentiality requirements of the Family Care program that prohibit benefit specialists from disclosing personally identifying information about a client without the client's informed consent, unless required by law.

#### Finding of Emergency

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

Chapter HFS 10 is the department's rule that guides the implementation of the department's Family Care program. Included in these provisions are standards for confidentiality which prohibit disability benefit specialists from disclosing personally identifying information about a client without the client's consent unless required by law. Because disability benefit specialists are permissive reporters, and thus not required to report abuse, neglect, or financial exploitation of elder adults and adults at risk under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., s. HFS 10.23 (2) (d) 2., effectively prevents disability benefits specialists from making such disclosures.

Amending s. HFS 10.23 (2) (d) 2., to allow disability benefit specialists to report abuse, neglect, or financial exploitation under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., would help to ensure that elder adults and adults-at-risk who may have been abused, neglected, or financially exploited are brought to the attention of the abuse, neglect and exploitation response systems outlined under ss. 46.90 and 55.043, Stats.

**Publication Date:** November 3, 2008  
**Effective:** November 3, 2008 through April 1, 2009  
**Hearing Date:** January 27, 2009  
**Extension Through:** June 30, 2009

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## Pharmacy Examining Board

**EmR0903** — A rule adopted repealing s. **Phar 4.02 (2)**, relating to the practical examination.

#### Finding of Emergency

The Pharmacy Examining Board finds that, under s. 227.24 (1), Stats., the repeal of s. Phar 4.02 (2) is required for the preservation of the public peace, health, safety and welfare.

Currently, under s. Phar 4.02 (2), the board administers a practical examination to determine an applicant's competence in compounding and dispensing medications, which includes consultation of patients. The board has determined that this examination is no longer needed because the competencies tested in the examination are also tested in two other national examinations that applicants are required to take in order to obtain a license in Wisconsin. The board has also determined that the practical examination requirement may contribute to the shortage of pharmacists in Wisconsin.

First, under s. Phar 4.02 (1) and (3), an applicant is required to take and pass the Multi-State Pharmacy Jurisprudence Examination (MPJE) and the North American Pharmacist Licensure Examination (NAPLEX). Both of these examinations test competencies that relate to subject areas that are also tested in the practical examination. As a result, applicants are required to take an additional examination, and pay an additional examination fee. In some instances, this step may also result in a delay in the processing of applications for licensure.

Second, in reference to the shortage of pharmacists in Wisconsin, the board has found that populations in rural areas and in certain city neighborhoods are underserved. The board believes that, because of its practical examination requirement, potential applicants from other states are declining to seek licensure in Wisconsin. Wisconsin is one of only four states that require a practical examination. None of the states that border Wisconsin have a practical examination requirement.

**Publication Date:** February 28, 2009  
**Effective:** February 28, 2009 through July 27, 2009  
**Hearing Dates:** April 8, 2009

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## Regulation and Licensing (2)

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

#### Exemption From Finding of Emergency

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

**Publication Date:** September 10, 2008  
**Effective:** September 10, 2008  
 through the date on which  
 the final rules take effect  
**Hearing Dates:** November 26, 2008  
 April 13, 2009

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

**Exemption From Finding of Emergency**

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

**Publication Date:** September 10, 2008  
**Effective:** September 10, 2008  
 through the date on which  
 the final rules take effect  
**Hearing Date:** November 26, 2008

The 2009 Wis. Act 2 (the 2007–09 budget repair bill) provided an additional \$1,000,000 GPR to the existing annual appropriation of \$3,000,000 GPR for the training program grants authorized in Wis. Stats. ss. 20.292 (1) (eh) and 38.41. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state’s economic vitality and health, with a special emphasis on advanced manufacturing and welding.

The Act requires the WTCS Board to award these funds by June 30, 2009 or the end of the current 2008–09 fiscal year. In addition, TCS 17.06 (1), *Wis. Adm. Code*, requires that district boards or employers receiving skills training or education under the grant shall contribute matching funds, other than in-kind matching funds, equal to at least 25% of total approved project costs.

Due to declining economic conditions and reduced business revenues, technical college districts report that employers are withdrawing participation in approved training grants because of an inability to fund the 25% match. Therefore, to ensure that business and incumbent workers in need of skills training and other education may access these services and that appropriated funds are distributed to technical college districts for this purpose before the end of the fiscal year, emergency administrative rules eliminating the 25% match requirement must be established immediately.

**Publication Date:** March 20, 2009  
**Effective:** March 20, 2009 through  
 August 16, 2009

**Revenue**

**EmR0820** — Rule adopted creating ss. Tax 8.03 and 8.05, relating to the registration of wine collectors, establishing standards of eligibility for registration as a wine collector, specifying the form and manner of notice required prior to the sale of wine by a wine collector, and the creation and organization of small winery cooperative wholesalers.

**Exemption From Finding of Emergency**

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

**Publication Date:** June 26, 2008  
**Effective:** June 26, 2008 through  
 July 1, 2010 or the date on  
 which permanent rules  
 take effect, whichever is  
 sooner.

**Wisconsin Technical College System Board**

**EmR0905** — Rule adopted revising Ch. TCS 17, relating to training program grant funds appropriated in 2009 Wisconsin Act 2.

**Finding of Emergency**

The Wisconsin Technical College System Board finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting an emergency is:

**Publication Date:** December 29, 2008  
**Effective:** January 1, 2009 through  
 May 30, 2009  
**Hearing Date:** February 12, 2009

**Workforce Development**

*Public Works Construction Contracts,  
 Chs. DWD 290–294*

**EmR0838** – Rules adopted revising 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 the 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.

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## Scope Statements

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### Transportation

#### Subject

Amends Chapter Trans 114, relating to the Uniform Traffic Citation, to eliminate figures 1–6, and also clarify that the automated citation must be in a format prescribed by the Department.

#### Policy Analysis

During the last audit of our Commercial Driver Licensing program in 2007, the reviewers indicated “The boxes on the uniform citation to identify CMV and hazmat involvement are not consistently and appropriately used by law enforcement for the DMV to identify and impose the appropriate disqualification action.”

We have met with the Uniform Traffic Citation Council, and they have agreed to the changes. As such, we plan to remove the fields related to license class and endorsements, and vehicle class and endorsements, and replace them with yes or no indicators for CMV Operation and Hazmat Operation. The change to the CMV/Hazardous materials reporting portion of the citation involves no issue of policy; it is simply made to hopefully improve the reliability of the data provided by officers.

Requiring the date and time of appearance to be shown on the citation is simply codifying procedures that should already be mandated by courts processing citations. A person who is being issued a citation should be notified of the time and place he or she is required to appear in court as part of that process. All persons have a fundamental due process right to notice of the time and place their case will be heard.

In addition, the 2007 CDL Compliance Review included the following finding:

“Wisconsin only receives 35% of convictions electronically and, as a result, will be hard-pressed to meet deadlines imposed by MCSIA for the timely posting of convictions (within 30 days by September 30, 2005, and within 10 days by September 30, 2008). Wisconsin must address the timeliness associated with the processes currently

in place by which convictions are reported and processed, if Wisconsin is to meet the initial 30-day requirement of the MCSIA by July 2005 and fully comply with the 10-day posting requirement of MCSIA by July ‘08.”

Our plan to address this finding was to expand the use of automated citations. To achieve this goal, we would like to clarify that the Department must prescribe the automated citation form to ensure that all law enforcement agencies are using the same document. This will eliminate confusion and increase efficiency, and all law enforcement agencies in the state will be using the same format, as they are today.

#### Statutory Authority

Section 345.11, Stats.

#### Comparison with Federal Regulations

The purpose of making changes to the citation form related to CMV use or the transportation of hazardous materials is to improve compliance with federal CDL laws and regulations. Federal law requires Wisconsin to:

- Notify the licensing jurisdiction within 10 days if one of its drivers is convicted of a CDL offense in Wisconsin.
- Post convictions on Wisconsin driving records within 10 days of their conviction.

Section 345.48 (1m), Stats., requires courts to report convictions to DMV within 5 working days. By having consistent information regarding CMV use or hazardous materials transportation, as well as a consistent automated citation format, DMV should be more consistent in processing reported convictions within the 10-day federal time limit.

#### Entities Affected by the Rule

Law enforcement agencies, Wisconsin Judicial System, and third party vendors such as the vendor who keys paper citations.

#### Estimate of Time Needed to Develop the Rule

80 hours

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# Submittal of Rules to Legislative Council Clearinghouse

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

## **Corrections CR 09–039**

On May 28, 2009, the Department of Corrections submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order repeals and recreates Chapter DOC 346, relating to secure detention facilities and juvenile portions of a county jail.

The Department of Corrections is authorized under s. 301.37, Stats., to develop “reasonable standards and regulations” for facilities, including secure detention facilities. The last revision of the current rule was in 1994. Subsequent changes in the law and accepted correctional practices necessitate revisions to DOC 346, including new standards.

The rule addresses three primary needs:

1. Repeal and recreate ch. DOC 346 to update, renumber and reorder for clarity. The Department is seeking revision of DOC 346, which not only reflects changes in law and correctional practice, but also clarifies existing standards. Since the last revision, it became apparent that clarification of many sections was necessary.

2. Bring the rule into conformity with ch. 938, Juvenile Justice Code, Wis. Stats. In 1996 the WI legislature created the Juvenile Justice Code (Chapter 938), which provided new direction in the ways juveniles would be managed in the juvenile justice system. Ch. DOC 346 was not changed at the time. The Department seeks to change DOC 346 to better reflect the changes in the law.

3. Bring the rule into conformity with the federal Juvenile Justice and Delinquency Prevention Act.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on June 26, 2009. The Department’s Office of Detention Facilities is primarily responsible for this rule.

### **Contact Information**

Kathryn R. Anderson, Chief Legal Counsel  
Department of Corrections  
3099 East Washington Avenue, P.O. Box 7925  
Madison, WI 53707–7925  
telephone: (608) 240–5049  
FAX: (608) 240–3306  
email: kathryn.anderson@wisconsin.gov

## **Government Accountability Board CR 09–040**

On May 29, 2009, the Government Accountability Board submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order amends section GAB 6.05, Wis. Adm. Code, relating to the filing of campaign finance reports in the electronic format of the internet-based Campaign Finance Information System.

### **Agency Procedure for Promulgation**

A public hearing will be scheduled at a later time. The Government Accountability Board is primarily responsible for preparing the proposed rule.

### **Contact Information**

Shane W. Falk, Staff Counsel  
Government Accountability Board  
212 E. Washington Avenue, 3<sup>rd</sup> Floor  
P.O. Box 7984, Madison, Wisconsin 53707–7984  
Phone: 266–2094  
Email: Shane.Falk@wisconsin.gov

## **Insurance CR 09–038**

On May 25, 2009, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order creates section Ins 6.90, relating to the use of designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

### **Agency Procedure for Promulgation**

A public hearing is scheduled for July 6, 2009.

### **Contact Information**

Holly L. Strop  
Phone: (608) 261–8283  
Email: holly.strop@wisconsin.gov

## **Transportation CR 09–041**

On June 1, 2009, the Department of Transportation submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order creates Chapter Trans 206, relating to the Local Roads Improvement Program.

**Agency Procedure for Promulgation**

A public hearing is required and are scheduled for July 20 and 22, 2009. The Division of Transportation Investment Management is primarily responsible for promulgation of the rule.

**Contact Information**

Julie A. Johnson, Paralegal  
(608) 267-3703  
julie1.johnson@wisconsin.gov



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## Rule–Making Notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

(Reprinted from May 31, 2009 Register)

#### CR 09–037

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on a proposed amendment to Chapter ATCP 91, Wis. Adm. Code, relating to selling commodities by weight, measure or count.

#### Hearing Information

**June 23, 2009**

Commencing at 9:30 AM

WI Dept. of Agriculture, Trade & Consumer Protection  
2811 Agriculture Drive — Board Room, 1<sup>st</sup> Floor  
Madison, WI 53718

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by Monday, June 15, 2009, by writing to Michelle Reinen, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911, [michelle.reinen@wi.gov](mailto:michelle.reinen@wi.gov), telephone (608) 224–5160. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

#### Copies of Proposed Rule

You may obtain a free copy of this proposed 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 may also obtain copies by calling (608) 224–5160 or emailing [michelle.reinen@wi.gov](mailto:michelle.reinen@wi.gov). Copies will also be available at the hearing. To view the proposed rule online, go to: <http://adminrules.wisconsin.gov>.

#### Appearances at the Hearing and Submission of Written Comments

DATCP will hold the public hearing at the time and location shown above. DATCP invites the public to attend the hearing and comment on the rule. Following the hearing, the hearing record will remain open until Friday, July 3, 2009 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address above, by email to [michelle.reinen@wi.gov](mailto:michelle.reinen@wi.gov) or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

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

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently regulates methods of sale of commodities (including required methods of sale by weight, measure or count). The current rules are designed to ensure fair competition, to prevent unfair and deceptive sales

practices, and to facilitate value comparisons by consumers. Current DATCP rules are contained in ch. ATCP 91, Wis. Adm. Code.

This rule changes current rules to make them consistent with standards published by the National Institute of Standards and Technology (“NIST”) and adopted by 45 other states. This rule also updates and clarifies current rule coverage.

#### *Statutes interpreted*

Sections 98.06, 98.07 and 100.20, Stats.

#### *Statutory authority*

Sections 93.07 (1), 98.07 (3) and (4), and 100.20(2), Stats.

#### *Explanation of agency authority*

DATCP has authority to regulate methods of competition and trade practices in business under s. 100.20, Stats. DATCP also administers laws, including ss. 98.06 and 98.07, Stats., related to the pricing and sale of commodities by weight, measure or count.

DATCP has general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP may adopt rules (general orders) under s. 100.20 (2), Stats., to regulate methods of competition and trade practices in business. DATCP may also adopt rules under s. 98.07(3) and (4), Stats., related to the pricing and sale of commodities by weight, measure or count.

#### *Related statutes or rules*

##### *Statutes*

Chapter 97, Stats., regulates the sale and labeling of food, and ch. 98, Stats., regulates commercial weights and measures. Various statutes specify methods of sale for specific commodities. See, for example, the following statutory sections:

- 97.177, Stats. (cheese).
- 97.176 and 97.18, Stats. (butter and margarine).
- 98.06, Stats. (berries and small fruits).
- 98.12, Stats. (frozen desserts).
- 98.21, Stats. (bread).
- 98.225, Stats. (deliveries of liquid fuel).
- 98.245, Stats. (LP gas).
- 98.246 and 100.18(6) and (8), Stats. (petroleum products and motor fuel).

##### *Administrative Code*

DATCP has adopted a number of rules affecting the method of sale of commodities. See, for example, the following chapters of the Wisconsin administrative code:

- ATCP 55 (meat and meat food products).
- ATCP 75 (retail food establishments).
- ATCP 81 (cheese grading, packaging and labeling).
- ATCP 85 (butter grading and labeling).
- ATCP 88 (egg grading and labeling).
- ATCP 90 (fair packaging and labeling).
- ATCP 92 (weights and measures).
- ATCP 109 (freezer meat and food service plans).

**Rule background**

Current DATCP rules (ATCP 91) regulate the sale of commodities by weight, measure or count. The current rules spell out general standards for all commodities, and more specific standards for some commodities. The current rules do all of the following:

- Require liquid commodities to be sold by liquid measure and nonliquid commodities by weight, with certain exceptions.
- Regulate price declarations by weight, to facilitate accurate price comparisons.
- Specify methods of sale for various food commodities including fruits and vegetables, meat, poultry, cheese, frozen desserts, pizza and “ready to eat” foods.
- Specify methods of sale for various non–food commodities including firewood, roofing material, polyethylene sheeting, potpourri and petroleum products.

NIST has published model method–of–sale standards, which are designed to promote reasonable and uniform standards between the states. However, the NIST standards do not have the force of law unless adopted by the states. At least 45 states have adopted some or all of the NIST standards.

Current DATCP rules are, in some respects, inconsistent with NIST. The Wisconsin statutes also include some requirements that differ from NIST. Within statutory limits, this rule modifies current DATCP rules (ATCP 91) to make them more consistent with NIST. This rule also makes non–substantive changes to reorganize and clarify current rules.

**Rule content***Standards for Specific Commodities*

NIST has published specific method–of–sale standards for certain commodities (these standards typically address consumer protection or fair competition issues that have arisen in connection with those particular commodities). This rule incorporates current NIST standards for the following commodities (subject, in some cases, to exceptions required by Wisconsin law):

*Food products*

- Meat, poultry, fish and seafood.
- Dairy products.
- Fresh fruits and vegetables.
- Butter, margarine and like spreads.
- Flour, corn meal and like products.
- Pickles and pickle relish.

*Non–food products*

- Fence wire.
- Coatings.
- Fireplace and stove wood.
- Peat and peat moss.
- Prefabricated utility buildings.
- Roofing and roofing material.
- Sealants.
- Sod and turf.
- Softwood lumber.
- Carpet.
- Hardwood lumber (retail)
- Polyethylene products.

- Insulation.
- Precious metals.
- Mulch.
- Liquefied petroleum gas.
- Liquid oxygen for respiration.
- Animal bedding.
- Wiping cloths.
- Baler twine.
- Potpourri.
- Communication paper.
- Bulk sand, rock, gravel and stone.

*General Standards*

This rule incorporates the following general NIST standards (or makes DATCP rules more consistent with those NIST standards):

- Price declarations for food commodities sold from bulk by weight (must be shown per whole unit, not fractional unit, of weight).
- Price presentation (showing fractions of a cent).
- Combination quantity declarations.
- Vending machine labeling.
- Railroad car tare weights.

*Comparison with federal regulations*

States have the primary responsibility for regulating methods of sale of commodities. The federal government (NIST) has published model method–of–sale standards, to promote effective state regulation and interstate uniformity. But those standards are not legally binding unless adopted by the states.

*Comparison with rules in adjacent states*

All surrounding states have adopted the NIST standards that DATCP proposes to adopt in this rule.

*Standards incorporated by reference*

This rule incorporates, by reference, standards contained in *NIST Handbook 130 (2009 edition)*, published by the national institute of standards and technology, United States department of commerce. Pursuant to s. 227.21, Stats., DATCP has requested permission from the Wisconsin Department of Justice to incorporate the standards by reference in this rule. Copies of the standards will be kept on file with DATCP and the Legislative Reference Bureau.

*Summary of factual data and analytical methodologies*

This rule is based on standards published by NIST, and are based on NIST data and analytical methodologies.

**Small Business Impact**

This rule will benefit businesses that sell commodities in more than one state, because it incorporates many of the NIST model standards and thus makes Wisconsin standards more consistent with standards used in 45 other states. This rule also reorganizes and clarifies current rules, so they will be easier to read and understand.

This rule adds some new standards to current rules. However, those standards are based on NIST standards with which most affected businesses are already complying. This rule will not have any significant adverse impact on small business or other affected businesses.

**Fiscal Estimate**

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

## Notice of Hearings

### Corrections

#### CR 09-039

NOTICE IS HEREBY GIVEN that pursuant to section 227.11 (2), Stats., the Department of Corrections will hold public hearings to consider repealing and recreating Chapter DOC 346, relating to secure detention facilities and juvenile portions of a county jail.

#### Hearing Information

<u>Date and Time</u>	<u>Location</u>
<b>June 26, 2009</b> 9:30 a.m.	Conference Room 5 (3 <sup>rd</sup> Floor) Portage County Annex 1462 Strongs Avenue Stevens Point, Wisconsin 54481
<b>June 26, 2009</b> 2:00 p.m.	Conference Room 1M-B (1 <sup>st</sup> Floor) Department of Corrections 3099 East Washington Avenue Madison, Wisconsin 53704

The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact Kathryn Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, email: [kathryn.anderson@wisconsin.gov](mailto:kathryn.anderson@wisconsin.gov), telephone (608) 240-5049 by June 19, 2009.

#### Appearances at the Hearings and Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by Friday, July 10, 2009. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email [kathryn.anderson@wisconsin.gov](mailto:kathryn.anderson@wisconsin.gov).

#### Copies of Proposed Rule

The proposed rule and an analysis of the proposed rule are available on the Internet at the Department of Corrections Web site at [www.wi-doc.com](http://www.wi-doc.com). Paper copies may be obtained without cost from Kathryn R. Anderson, at the Department of Corrections, P.O. Box 7925, Madison, WI 53707-7925, or by email at [kathryn.anderson@wisconsin.gov](mailto:kathryn.anderson@wisconsin.gov), or by telephone (608) 240-5049. Copies will also be available at the public hearing.

#### Analysis Prepared by Department of Corrections

##### *Statutes interpreted*

Sections 301.36, 301.37 and 938.209, Stats., and 42 USC 5601 to 5761 and 28 CFR Part 31.

##### *Statutory authority*

Sections 227.11 (2) and 938.22 (2) (a), Stats.

##### *Explanation of agency authority*

The Department of Corrections is responsible for establishing standards for and inspecting juvenile detention facilities and juvenile portions of a county jail.

##### *Related statute or rule*

Subchapter IV of Chapter 938, Stats., (Taking a Juvenile in Custody), and Chapter DOC 346, Wis. Adm. Code.

#### Plain language analysis

The rule:

1. Reorganizes and renumbers the existing chapter DOC 346.
2. Updates citations to include references to chapter 938, Wis. Stats.
3. Updates citation to the federal Juvenile Justice and Delinquency Prevention Act, 42 USC 5601 to 5761, and its regulations, 28 CFR Part 31, to indicate Wisconsin's compliance with the current version of the act and regulations.
4. Creates definitions for the following terms: construction plans, facility program and officer.
5. Amends definitions for the following terms: family, juvenile, multi-purpose space, and undergarments.
6. Amends the requirements for the operational plan to include policies and procedures concerning disciplinary hearings, release, and searches.
7. Creates a requirement that the facility shall maintain a record of the proceedings for the annual meeting.
8. Amends the information which the facility is required to maintain on an admitted juvenile to include date and time of admission, authority for admission, and date and time of release.
9. Amends the timeframe for reporting to the department major occurrences from 48 to 24 hours.
10. Amends the reporting requirement for suicide attempts to those situations where the juvenile is admitted to a hospital or if the juvenile is treated for a life-threatening injury.
11. Clarifies that juveniles may only be admitted to secure detention based on enumerated statutory provisions.
12. Eliminates the reference to the intake worker as a step in the admission process for a secure detention facility.
13. Prohibits the holding of a person who is 18 years of age or older in a secure detention facility or a juvenile portion of a county jail.
14. Deleted requirement to report to the department violations of s. 938.067, Wis. Stats., powers and duties of intake workers.
15. Creates a requirement that facilities develop policies and procedures addressing the release of juveniles from the facility.
16. Clarifies the procedure for the submission and approval of construction plans.
17. Limits the use of receiving cells not to exceed 72 continuous hours.
18. Limits the use of holding rooms not to exceed 24 continuous hours.
19. Requires facilities which are newly built or substantially remodeled after the effective date of the rule to install anti-rollout plates on all upper bunks.
20. Creates a requirement for storage space and visiting space but does not impose any dimensional requirements.
21. Creates a requirement for classroom space which complies with local or state requirements. This requirement only applies to facilities that are newly constructed or substantially remodeled after the effective date of the rule.



22. Creates a requirement that if medical or dental services are provided in the facility, there shall be sufficient space, equipment, supplies and materials for the performance of the services in a confidential and private manner.
23. Creates a minimum dimensional requirement for outdoor recreation space if a facility provides for outdoor recreation.
24. Reduces the frequency of fire inspections from semi-annually to annually.
25. Requires specific training on the subjects of suicide prevention, mental health, crisis intervention, medication, use of restraints and control devices, and communication skills.
26. Requires that 8 hours of the current annual 24-hour recertification training address suicide prevention, mental health, crisis intervention, and medications.
27. Requires that the second staff person on duty must be an officer, not an administrative or clerical person.
28. Requires that a facility include a policy and procedure on the issue of delivery of medications.
29. Permits a facility to create a policy for the supervised self-administration of insulin injections.
30. Requires TB testing for juveniles who are held beyond one week if prescribed by a medical professional.
31. Permits a juvenile to abstain from eating foods which violate the juvenile's religion and requires the facility to substitute from other available food from the menu served at the meal as long as the substitution is nutritious and meets generally accepted nutritional standards.
32. Prohibits audio monitoring of professional visits.
33. Clarified language regarding the observation of juveniles.
34. Creates requirement for facilities to develop policies and procedures relating to searches (juveniles, staff, and property).
35. Amends the list of restraints and control devices to include restraint chairs.
36. Creates a subchapter which addresses the use of juvenile portions of a county jail.
37. Clarifies that juveniles may only be admitted to a juvenile portion of a county jail for limited periods of time.

#### ***Comparison with federal regulations***

Wisconsin opted to come into compliance with the federal Juvenile Justice and Delinquency Act (JJDP), 42 USC 5601, et seq., and the implementing regulations (28 CFR Part 31), thereby making certain funds under the Act available to Wisconsin counties. In 1990 the federal Office of Juvenile Justice and Delinquency Prevention approved Wisconsin's Revised Jail Removal Plan. This plan permitted an exception to the JJDP provision prohibiting co-location of juveniles in adult jails. In order to come into compliance with the JJDP and the Wisconsin Jail Removal Plan, the Department of Corrections revised chapter DOC 346, Wis. Adm. Code, which governs juvenile detention facilities, in 1992 and 1994. The level of compliance with the JJDP may affect the level of funding available to Wisconsin.

In general the JJDP and its regulations generally prohibit sight and sound contact between juveniles and adults. A

facility may achieve sight and sound separation through architectural or procedural means. Sight or sound contact is permitted if it is both brief and inadvertent or accidental. Contacts must be reported as violations of the JJDP. The JJDP permits the transfer or placement of adjudicated delinquents in adult facilities once the juvenile has attained the age of full criminal responsibility under State law (17 years of age for Wisconsin). (42 USC 5633 (a) (11), (12), and (13))

The JJDP also regulates co-located facilities, that is, adult and juvenile facilities which are in the same building complex. The JJDP requires sight and sound separation of juveniles and adults through architectural or procedural means. (42 USC 5633 (a) (11), (12), and (13))

The JJDP also limits the amount of time that a juvenile may be held in an adult jail or lockup. (42 USC 5633 (a) (11), (12), and (13))

#### ***Comparison of rules in adjacent states***

##### *Illinois:*

The Illinois Department of Corrections oversees county juvenile detention facilities. The standards are found in Title 20: Corrections, Criminal Justice, and Law Enforcement; Chapter 1: Department of Corrections; Subchapter f: County Standards; Part 702, County Juvenile Detention Standards.

The WI DOC and the IL DOC have similar minimum standards for juvenile detention facilities, including staff training, reporting requirements, strip searches, admission and release procedures, clothing, personal hygiene and grooming, food service, sanitation, classification, fire safety, discipline, mail, telephone, visiting, programs (recreations, religion, etc.), and design and construction of new or substantially remodeled facilities.

Like Wisconsin, Illinois requires that a superintendent be appointed to oversee the facility. However, Illinois also requires that an assistant superintendent be appointed in facilities with a rated capacity of 25 or more. Illinois also requires that there be 3 persons on duty per shift, Wisconsin requires only two.

Illinois requires an initial orientation conducted by a caseworker or supervisor which is not required by Wisconsin. Illinois prohibits newly admitted juveniles from being placed in isolation pending a routine medical examination by a health care professional or as a cooling off period.

Illinois requires 70 square foot for single cells, while Wisconsin requires 54 square feet. For multiple occupation cells or rooms Illinois maintains the 70 square foot requirement, regardless of the number of occupants. Illinois requires 30 square feet per juvenile living space per cluster of cells. Wisconsin requires 35 square feet per juvenile based the rated capacity of the adjacent cells.

Illinois requires that all juveniles who are held for more than 7 days be given a medical screening by a health care professional. This appears to be in addition to the intake screening.

Illinois requires outdoor recreations space of 200 square feet per occupant with a minimum size of 3,000 square feet.

Illinois has established minimum standards. In addition, in the rules, Illinois provides further recommendations with regard to specific areas. The Illinois requirements may be waived for existing facilities.

##### *Iowa:*

The Iowa Department of Corrections does not oversee county juvenile detention facilities or establish standards. The Iowa Department of Human Services performs those functions. The standards are found in IAC Human Services

Title XII (Licensing and Approved Standards) Chapter 105 (County and Multi–county Juvenile Detention Homes and County and Multi–county Juvenile Shelter Care Homes).

The WI DOC and IA Department of Human Services have similar minimum standards for juvenile detention facilities, including written policy and procedure manual, intake procedures, educational and other daily programming, recreation, health care, restraints, cell confinement, juvenile facility handbook, and clothing.

Iowa provides that adequate storage be provided for each juvenile in their sleeping room. (Wisconsin provides for storage of juvenile personal property but does not require that the storage be in the cell.) Iowa provides a minimum of 60 square feet/child for multiple occupancy and 80 square feet/child for single occupancy rooms. (Wisconsin provides 70 square feet for double cells, 54 square feet for single cells and 70 square feet of combined sleeping and day room square feet per juvenile for dormitories.) In addition, Iowa provides for single and double cells but does not provide for dormitories.

Iowa provides more detail regarding employment standards and records and the maintenance of those records. Iowa requires that there be a minimum of two staff members for six or more juveniles. (Wisconsin requires two staff members are on duty at all times and the ratio is a minimum of one staff member to 15 juveniles.) Iowa requires visual observation of juveniles every half hour. (Wisconsin has a similar requirement. However, Wisconsin also requires an every 15 minute check for juveniles in higher security level.)

Iowa does not address some issues which the Wisconsin standards do, specifically suicide prevention, mental health care, mail, telephone, access to religion, searches, classification plan and visitation.

Iowa addresses some issues which the Wisconsin standards do not, specifically, child abuse or mistreatment. Iowa also has a broader, more specific provision addressing documentation of the juvenile case file.

#### *Michigan:*

The Michigan Department of Corrections does not oversee county juvenile detention facilities or establish standards for those facilities. The MI Department of Consumer and Industry Services, Division of Child Welfare Licensing performs those functions. The standards are found in MI Rule 400.10101, et seq.

The WI DOC and MI Department of Consumer and Industry Services have similar minimum standards for juvenile detention facilities, including reporting hospitalization and injury or death of a juvenile, clothing, personal hygiene, nutrition, discipline, cell confinement, bedding and linen, construction, variances, training, mail (regular and privileged), visitation, religious programming, resident records and admission information, construction plans review and approval.

The WI Department of Commerce rules address with specificity fire detection standards.

There are differences between the standards in the following areas: staffing (WI ratio is 1:15, the MI ratio is 1:8; WI establishes dimensions and standards for single, double occupancy cells and dormitories (3 juveniles or more), MI has established dimensions and standards for single occupancy and multi–occupancy (WI provides for single cells to be a minimum of 54 sq. ft., double cells minimum of 70 sq. ft., and dormitories minimum of 70 sq. ft. combined day room and sleeping space; MI 70 sq. ft. single cell; 45 square feet in multi–resident sleeping rooms); grievance procedure; use of

cell confinement for discipline purposes (WI up to 6 hours before administrator approval, MI up to 72 hours before supervisory approval); restraints (WI requires facilities to establish policies and procedures, MI has provided specific standards); inspection and approval required before occupancy.

#### *Minnesota:*

The Minnesota Department of Corrections establishes minimum standards and inspects county juvenile detention facilities. The standards are found at Minnesota Rules, Chapter 2960.

The WI DOC and MN Department of Corrections have similar minimum standards for juvenile detention facilities, including admission criteria, property, intake screening, rules, discipline and due process, religious services, exercise and recreation, education, health and hygiene, food service, clothing, bedding, laundry, visitation, mail, staff training, staffing plan, and a classification plan.

There are differences between the Wisconsin and Minnesota standards: Minnesota requires a staffing ratio of one staff member to 12 juveniles when the juveniles are awake and one staff member to 25 juveniles when the juveniles are asleep. (Wisconsin requires a staffing ratio of 1 staff to 15 juveniles. Wisconsin does not differentiate between juveniles who are awake or asleep.) Minnesota requires that facilities with more than 24 juveniles have a full time program director.

Minnesota has established several different types of secure facilities: 24 temporary hold over facility, 8 day temporary hold over facility, and a secure detention facility. (Wisconsin only has secure detention facilities.) Depending on the facility, some of the requirements and standards differ. For example, staff training for a MN 8 day facility is 24 hours annually, but for a secure detention facility the training is 40 hours. (Wisconsin requires 24 hours of training for facility staff. Under the proposed rule, Wisconsin will specify 8 hours of the 24 hours required training shall address the care and custody of juveniles, suicide prevention, mental health, crisis intervention, medication, and use of restraints and control devices.)

#### ***Summary of factual data and analytical methodologies***

This rule does not affect small businesses. The rule establishes minimum standards for county secure detention facilities.

#### ***Analysis and supporting documentation used to determine effect on small businesses***

No economic impact report was required.

#### **Small Business Impact**

There is no expected effect on small businesses under s. 227.114, Stats.

#### **Fiscal Estimate**

##### ***Summary***

Although the Department anticipates it will have some additional workload related to policy and procedure development, any additional costs that would be generated should be able to be absorbed within the Department's budget.

Some counties may need to re–write their policies and procedures. Costs to individual counties cannot be determined at this time, but it is estimated that they will be minimal.

##### ***State fiscal effect***

Increase in costs that may be possible to absorb within the agency's budget.

##### ***Local government fiscal effect***

Increase in costs.



**Types of local governmental units affected**

Counties.

**Long-range fiscal implications**

Indeterminable.

**Agency Contact Person**

Kathryn R. Anderson, Chief Legal Counsel  
 Department of Corrections  
 3099 East Washington Avenue  
 P.O. Box 7925  
 Madison, WI 53707-7925  
 Phone: (608) 240-5049  
 FAX: (608) 240-3306  
 Email: Kathryn.Anderson@Wisconsin.gov

**Notice of Hearing****Insurance****CR 09-038**

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in s. 227.18, Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider the adoption of rules creating section Ins 6.90, Wis. Adm. Code, relating to the use of designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

**Hearing Information**

**Date:** July 6, 2009  
**Time:** 10:00 a.m., or as soon thereafter as the matter may be reached  
**Place:** OCI, Room 227, 2<sup>nd</sup> Floor  
 125 South Webster St.  
 Madison, WI

**Submission of Written Comments**

Written comments can be mailed to:

Holly L. Strop  
 Legal Unit – OCI Rule Comment for Rule Ins 690  
 Office of the Commissioner of Insurance  
 PO Box 7873  
 Madison WI 53707-7873

Written comments can be hand delivered to:

Holly L. Strop  
 Legal Unit – OCI Rule Comment for Rule Ins 690  
 Office of the Commissioner of Insurance  
 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703-3474

Comments can be emailed to:

Holly L. Strop  
 holly.strop@wisconsin.gov

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

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

**Copies of Proposed Rule and Contact Person**

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

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

**Analysis Prepared by the Office of the Commissioner of Insurance (OCI)****Statutes interpreted**

Sections 600.01, 601.41 (3), 628.34 (12), Stats.

**Statutory authority**

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

**Explanation of agency authority**

The proposed rule is promulgated under the Commissioner's authority to prescribe misleading, deceptive and prohibited practices for insurers and insurance intermediaries.

**Related statutes or rules**

The proposed rule relates to existing statutes and rules defining misleading, deceptive and prohibited practices for insurers and insurance intermediaries under ch. 628, Wis. Stats., and s. Ins 6.60, Wis. Adm. Code.

**Plain language analysis**

Chapter Ins 6, Wis. Adm. Code, sets forth general information regarding prohibited business practices insurers and insurance intermediaries. Recently, states have identified a possible fraudulent marketing and sales activity related to the use of senior-specific certifications in the sale of insurance products to seniors. In 2008, the National Association of Insurance Commissioners (NAIC) created a committee to establish a model rule setting standards for the use of senior specific certifications and professional designations by insurance producers in the sale of life insurance and annuities to all consumers regardless of age. The NAIC Model Rule was adopted in July of 2008. The proposed Wisconsin rule follows the NAIC Model with two exceptions. First, the proposed rule adds the term advertising to the list of practices and conduct to which the rule applies. Second, the proposed rule adds health insurance to life insurance an annuity products in the list of insurance products to which the rule applies.

**Comparison with federal regulations**

The North American Securities Administrators Association (NASAA) Model Rule, adopted March 20, 2008, addresses the use of senior specific certifications or designations by any person in connection with the offer, sale, or purchase of securities. The NAIC Model Rule, adopted in September of 2008, addresses the use of senior specific certifications and professional designations by insurance producers in the sale of life insurance and annuities.

**Comparison with rules in adjacent states**

To date, Iowa is the sole state, adjacent to Wisconsin to adopt the NAIC Model Rule. Nationally, several non-adjacent states have adopted the NAIC Model Rule, including, California, Kentucky, Missouri, New Hampshire, New Jersey, and Utah. Similar legislation is pending in

Alaska, Arkansas, Florida, Oklahoma, Ohio, Rhode Island, and Virginia. The degree to which each state's regulations track the Model Rule varies widely. Utah and Ohio also expanded the scope of the regulation to include health insurance.

*Illinois:* n/a

*Iowa:*

Iowa Administrative Code 191-10.19, tracks the NAIC Model Rule.

*Michigan:* n/a

*Minnesota:* n/a

#### **Summary of factual data and analytical methodologies**

OCI review of complaints, NAIC models, similar legislation in other states, and insurer's financial information.

#### **Analysis and supporting documentation used to determine effect on small businesses**

This rule relates to prohibited business practices of insurance intermediaries and there is no significant effect on small businesses.

#### **Small Business Impact**

This rule does not impose any additional requirements on small businesses and will have little or no effect on small businesses.

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

#### **Fiscal Estimate**

##### **State or local government fiscal effect**

There will be no state or local government fiscal effect.

##### **Private sector fiscal effect**

This rule change will have no significant effect on the private sector regulated by OCI.

### **Notice of Hearings Transportation CR 09-041**

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1), 86.31 (6) and 227.11 (2), Stats., the Department of Transportation will hold public hearings at the following locations to consider the creation of Chapter Trans 206, relating to the local roads improvement program.

#### **Hearing Information**

##### **Monday, July 20, 2009 — 1:00 PM**

Department of Transportation  
Hill Farms State Transportation Building  
4802 Sheboygan Avenue, Room 144-B  
Madison, WI

##### **Wednesday, July 22, 2009 — 12:00 Noon**

North Central Technical College  
1000 W. Campus Drive, Main Building  
Room E101  
Wausau, WI

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

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

#### **Copies of Proposed Rule**

A copy of the proposed rule may be obtained upon request from Lori Richter, Department of Transportation, Bureau of Transit, Local Roads, Railroads & Harbors, Room 951, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Lori by phone at (608) 266-0254 or via e-mail: [lori.richter@dot.state.wi.us](mailto:lori.richter@dot.state.wi.us).

#### **Agency Contact Person and Submission of Written Comments**

The public record on this proposed rule making will be held open until August 5, 2009, to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at either hearing. Any such comments should be submitted to:

Lori Richter, Department of Transportation  
Bureau of Transit, Local Roads, Railroads & Harbors  
Room 951  
P. O. Box 7913  
Madison, WI 53707-7913.  
Phone: (608) 266-0254  
e-mail: [lori.richter@dot.state.wi.us](mailto:lori.richter@dot.state.wi.us).

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

#### **Analysis Prepared by the Wisconsin Department of Transportation**

##### **Statutes interpreted**

Sections 86.31(1) (am), (b) and (c), (2) (a), (b), (d) and (e), (3g), (3r) and (6) (d), (f), (g) and (h), Stats.

##### **Statutory authority**

Sections 85.16 (1), 86.31 (6) and 227.11 (2), Stats.

##### **Explanation of agency authority**

Chapter Trans 206 interprets and administers s. 86.31, Stats., the local roads improvement program. Section 86.31 was revised in 1999 Wis. Act 9 (eff. October 29, 1999), in 2001 Wis. Act 16 (eff. September 1, 2001), in 2003 Wis. Act 33 (eff. July 26, 2003), and in 2005 Wis. Act 25 (eff. July 27, 2005). The proposed rule will incorporate these statutory revisions and other related changes.

##### **Related statute or rule**

Sections 84.01 (9) and 84.02 (11), Stats.

##### **Plain language analysis**

1997 Wis. Act 27, s. 86.31 (3g), Stats., incorporates the county highway improvement discretionary program (CHIP-D) for high cost county highway projects of at least \$250,000 in eligible total project costs. This proposed rule making creates procedures and criteria for the selection of projects.

1999 Wis. Act 9, s. 86.31 (3r), Stats., created a new Municipal Street Improvement Discretionary Program (MSIP-D) to fund a competitive, municipal street improvement program similar to the existing discretionary programs for high-cost town roads and county highways. It specified that eligible projects must have a total estimated cost of at least \$250,000. This proposed rule making creates procedures and criteria for the selection of projects.

This proposed rule making amends s. Trans 206.03 (14) to indicate that it applies to recipients of entitlement projects only; it does not apply to recipients of CHIP-D, TRIP-D or MSIP-D projects.

1999 Wis. Act 9 requires the Department to amend ch. Trans 206, relating to the Local Roads Improvement Program (LRIP), to incorporate the changes set forth in the Act regarding the provisions for projects that can be done by county highway departments and the solicitation and awarding of bids for town projects.

1999 Wis. Act 9 eliminates the provisions set forth in s. 86.31 (2) (d) 1., 2. and 3., Stats., that restrict the amount of work on county trunk highways that may be done by county highway departments under the county highway improvement program (CHIP) and CHIP-D.

1999 Wis. Act 9 provides that county highway departments may do work under the basic county highway improvement program or the discretionary county highway improvement discretionary program if they demonstrate that doing so will be cost-effective, provided that each county highway department uses competitive bidding for the funds provided by the state under the CHIP and the CHIP-D programs.

The Act eliminates the provision that requires each county highway improvement district committee to ensure compliance with the provisions related to the amount of work that may be done by county highway departments and, instead, requires these committees to: (1) review each project proposed by a county highway department and to determine if it would be cost-effective for the county highway department to perform the work; and (2) to approve the proposed project prior to its being performed by the county highway department.

The Act modifies the membership of each county highway improvement district committee to specify that it shall be composed of the highway commissioners from each county in the Wisconsin County Highway Association district.

The Act requires DOT to amend the existing rule to include: (a) criteria for determining whether a project can be done cost-effectively by county highway departments; and (b) procedures for departmental review of disputes relating to whether proposed work by a county highway department is cost-effective.

The Act eliminates the provision in s. 86.31 (2) (b), Stats., that allows towns to contract with counties to perform work under the town road improvement program and the town road improvement discretionary programs (TRIP and TRIP-D) if the town does not receive a responsible bid on a project. Instead, the Department must amend ch. Trans 206 to include criteria and procedures for determining when a contract for a project under the TRIP and TRIP-D programs may be awarded to a county. The criteria must include: (a) a requirement that a written and sealed estimate of the cost of the improvement that includes the source of the estimate be prepared prior to the time set for the opening of bids for the improvement and not be opened until after the opening of all bids; (b) a requirement that all bids may be rejected and the contract awarded to a county for the improvement if the lowest bid exceeds the cost estimate by at least 10% and the town board notifies the lowest two bidders or, if only one bid was received, the single bidder, to provide information on the accuracy of the cost estimate; (c) a requirement that the amount of the contract with a county for the improvement be at least 10% below the lowest bid received for the improvement; and (d) a provision that permits re-bidding if the amount of the proposed contract with a county for the

improvement is less than 10% below the lowest bid received for the improvement.

The proposed rule limits the number of times a project may be substituted under the LRIP program to one, requires county highway commissioners to review and maintain required documents for project approved within their counties, except for applications from cities or villages with populations of 20,000 or more. It also requires funds committed under the LRIP to be reimbursed within three biennia of when the funds were originally committed. It also requires that the number of projects that can be submitted in a given biennium for funding under TRIP and MSIP less than 20,000 in population is not to exceed one half of the number of towns or eligible cities or villages.

#### ***Comparison with federal regulations***

This is a state program for local governments assisting in the improvement of deteriorating local highways, streets and roads. There are no existing or proposed federal regulations.

#### ***Comparison with rules in the following states***

##### *Michigan:*

No similar program.

##### *Minnesota:*

Minnesota has a local roads program, but the State provides grants rather than reimbursement.

##### *Illinois:*

No similar program.

##### *Iowa:*

No similar program.

#### ***Summary of factual data and analytical methodologies***

This proposed rule implements statutory changes and clarifies program policies, procedures and requirements related to the Local Roads Improvement Program. The Department's implementation is the same as the Department applies to its other local programs under ch. 86, Stats., *Miscellaneous Highway Provisions*.

#### ***Analysis and supporting documentation used to determine effect on small businesses***

This proposed rule pertains to a state program for local governments entering into a state municipal agreement with the Department for partial reimbursement of costs related to deteriorating local highways, streets and roads. The program does not provide any direct reimbursements or assess any fees to any small businesses.

#### **Small Business Impact**

The proposed rule will have no adverse impact on small businesses.

The Department's Regulatory Review Coordinator may be contacted by e-mail at [ralph.sanders@dot.state.wi.us](mailto:ralph.sanders@dot.state.wi.us), or by calling (414) 438-4585.

#### **Fiscal Estimate**

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

Under 1997 Wis. Act 27, s. 86.31 (3g), Stats., the Department allocates \$5,000,000 annually, beginning in fiscal year 2001-02, to fund county highway improvement projects with total eligible costs of \$250,000 or more from the discretionary LRIP appropriation. This funding is in addition

to the allocation of funds available to counties through the formula generated entitlement program.

Under 1999 Wis. Act 9, s. 86.31 (3r), Stats., the Department allocates \$1,000,000 annually, beginning in fiscal year 2001–02, to fund municipal street improvement projects with total eligible costs of \$250,000 or more from the discretionary LRIP appropriation. This funding is in addition to the allocation of funds available to cities and villages through the formula generated entitlement program.

The proposed rule defines and incorporates the sunset on funds policy recommended by the LRIP study group. This policy is intended to ensure the timely use of program funds, within three biennia of programming.

The proposed rule also defines and incorporates the program review process recommended by the LRIP study group. The process includes a mechanism for assessing sanctions and provides the community with an opportunity

for appeal.

The proposed rule updates language related to engineering certification to be consistent with statutory language.

The proposed rule updates administrative costs to be consistent with administrative policy and clarifies several issues in the current rule relating to the definition of eligible project and utilities.

The proposed rule clarifies the role of the county highway commissioner, detailing the responsibility for the commissioner to ensure adherence with statutory law and program rules and required recordkeeping. It requires the commissioner to submit entitlement applications totaling no more than one-half the available funds in any given year.

***Anticipated costs incurred by private sector***

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

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## Submittal of Proposed Rules to the Legislature

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

**Agriculture, Trade and Consumer Protection**  
**CR 09-009**

A rule-making order to revise Chapter ATCP 70, relating to food processing plants.

Mortality Table in determining the minimum standard of valuation reserves and the minimum standard nonforfeiture values for preneed funeral life insurance products.

**Insurance**  
**CR 09-027**

A rule-making order to revise section Ins 2.81, relating to use of the 1980 CSO Standard Ordinary Life Valuation

**Public Instruction**  
**CR 09-011**

A rule-making order to revise Chapter PI 22, relating to precollege scholarships.



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## Rule Orders Filed with the Legislative Reference Bureau

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

### **Agriculture, Trade and Consumer Protection** **CR 08-067**

Revises Chapter ATCP 123, relating to customer access to subscription video services.  
Effective 8-1-09.

application of reasonably available control technology emission limitations to sources of volatile organic compounds in ozone non-attainment counties, and affecting small business.  
Effective 8-1-09.

### **Commerce**

#### ***Elevators, Escalators and Lift Devices, Ch. Comm 18*** **CR 09-012**

Revises Chapter Comm 18, relating to suspension ropes and their connections serving elevators.  
Effective 7-1-09.

### **Insurance** **CR 09-004**

Revises sections Ins 17.01 (3) and 17.28 (3) (c) and (6), relating to the annual injured patients and families compensation fund fees and medical mediation panel fees for the fiscal year beginning July 1, 2009.  
Effective 7-1-09.

### **Natural Resources**

#### ***Environmental Protection — Air Pollution Control,*** ***Chs. NR 400—*** **CR 08-102**

Revises Chapters NR 422, 423, 439, and 484, relating to the

### **Natural Resources**

#### ***Environmental Protection — Air Pollution Control,*** ***Chs. NR 400—*** **CR 08-104**

Revises Chapters NR 419 and 484, relating to VOC emission controls for industrial wastewater collection and treatment operations.  
Effective 8-1-09.

### **Natural Resources**

#### ***Environmental Protection — Air Pollution Control,*** ***Chs. NR 400—*** **CR 08-114**

Amends section NR 439.075 (2) (c) 3. j. and creates section NR 421.07, relating to the application of reasonably available control technology for volatile organic compound emissions from certain operations within the synthetic organic chemical manufacturing industry.  
Effective 8-1-09.

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## Public Notices

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### Department of Health Services

#### Birth to 3 Program OPT OUT Policy

NOTICE IS HEREBY GIVEN that pursuant to the Individuals with Disabilities Act (IDEA) Section 612(a)(19) and 34 CFR §303.110 – 34 CFR §303.112, the Department of Health Services will hold a public hearing to consider a state policy allowing families the ability to “opt out” of the required LEA Notification process while participating in the Birth to 3 Program.

#### Hearing Date and Locations

##### Date and Time

**June 30, 2009** 3:00 PM – 6:00 PM

##### Location

UW–Waukesha  
Room C103  
1500 University Drive  
Waukesha WI 53188

UW–LaCrosse  
Communications Bldg. — Wing 102  
1725 State Street  
LaCrosse WI 54601

UW–Menasha Fox Valley  
Room 1838  
1478 Midway Rd.  
Menasha WI 54852

UW–Wausau Marathon County  
Room 218  
518 S. 7<sup>th</sup> Avenue  
Wausau WI 54401

UW–Madison  
Pyle Center — Room 227  
702 Langdon Street  
Madison WI 53706

#### Accessibility

##### *English*

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting Lori Wittemann at 608–267–5150. You must make your request at least 7 days before the activity.

##### *Spanish*

DHS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con Lori Wittemann al número 608–267–5150. Debe someter su petición por lo menos 7 días de antes de la actividad.

### ***Hmong***

DHS yog ib tus tswv Hadj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muja mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv. Koj yuav tau thov kev pab uas yog hu rau Lori Wittemann ntawm 608-267-5150. Koj yauv tsum thov qhov kev pab yam tsawg Kang 7 hnuv ua ntej qhov hauj lwm ntawd.

### **Place Where Written Comments May be Submitted**

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the DHS Birth to 3 Website at [www.B3wisconsin.org](http://www.B3wisconsin.org). Click on the link, “2009 Proposed Wisconsin Opt Out Policy.”

### **Deadline for Comment Submission**

Comments may be submitted from May 19, 2009 through June 30, 2009 at 4:30 PM.

### **Analysis Prepared by the Department of Health Services**

#### ***Explanation of agency authority***

Under the IDEA section 637(a)(9)(A)(ii)(I), 34 CFR §303.148(b)(1), and the Office of Special Education Program’s 2004 Letter to Elder, the lead agency must disclose limited child find information (i.e. child’s name, date of birth, parent contact information) to the local education agency (LEA) where the child resides unless the lead agency has adopted an opt out policy and the parent opts out. The lead agency may not require affirmative parental consent for this limited disclosure.

To adopt an opt out policy for parents participating in the Birth to 3 Program, IDEA section 612(a)(19) and 34 CFR §303.110 – 303.112 requires States to post the policy, accepting public comment including through a public hearing.

#### ***Plain language analysis***

Families with children who have delays or disabilities and are under the age of three may be eligible for services through the federal and state mandated program called Early Intervention Services or Birth to 3. This program is designed to support families in understanding and meeting their child’s needs. When a child and family transitions out of the program, families are supported in accessing services the child and family may need. Children typically transition out of the program at the age of three.

To increase the opportunities of children transitioning from the B-3 program to receive supports or services from which the children may benefit, Birth to 3 Programs are required by IDEA to send the child’s name, date of birth, and parental contact information (limited contact information) to the LEA or school district that serves children over age three with disabilities.

In Wisconsin, families are an integral part of the transition process. With this philosophy in mind, the Wisconsin Birth to 3 Program proposes an opt out policy that allows families that do not want the limited contact information provided to the LEA to be able to “opt out” of having this information sent.

The Birth to 3 Program staff would provide the family with information about the LEA Notification process early in the child’s participation in the program. If the family chooses to “opt out,” they would sign and return the “opt out” form. If the “opt out” form is returned to the Birth to 3 Program before the child is 30 months of age, the limited contact information would not be sent to the LEA. If the “opt out” form is not received by the time the child is 30 months of age, then the requirement to send limited contact information to the LEA would be carried out by the Birth to 3 Program.

Overall, the proposed policy allows for those families that choose to “opt out” of limited contact information being shared with the LEA to document this decision and stop the information being sent to the LEA. For Birth to 3 programs serving families with children with delays or disabilities participating in early intervention services, the additional work requirements are limited—the Birth to 3 programs would assure that families are given the information about the LEA Notification process and the Opt out option and then, if a parent-signed “opt out” form is received, the Birth to 3 program would need to document this objection.

### **Fiscal Estimate**

There is no fiscal impact on Birth to 3 Programs as the information is to be incorporated into already existing processes.

### **Text of Proposed Opt Out Policy**

IDEA section 637(a)(9)(A)(ii) requires States to have policies and procedures that ensure a smooth transition for children receiving Part C early intervention services to Part B preschool or other appropriate services. Policies and procedures also must include how the Part C lead agency will notify the local education agency (LEA) for the area in which each child resides that the child will shortly reach the age of eligibility for preschool services under Part B, as determined by State law.

The WI Birth to 3 Program ensures that each child in the Birth to 3 Program has LEA Notification sent to the local education agency (LEA) in which the child resides as the child closely approaches the age of eligibility for Part B services which for the State of Wisconsin is three years old. LEA Notification is sent to the LEA with the child's name, date of birth, and parent's name and contact information, unless the parents "opt out". This information is sent to the LEA unless the parent indicates in writing on the "Opting Out of LEA Notification" form that they "opt out" of the LEA receiving identifying information. This policy and the "Opting Out of LEA Notification" form is given to the family when a child is determined to be eligible for the Birth to 3 program, after an initial Individualized Family Service Plan (IFSP) is developed. If the family "opts out" from this LEA notification, the family is asked to return the signed "Opting Out of LEA Notification" form within 10 days after the receipt of the "Opting Out of LEA Notification" form. If the parent-signed "Opting Out of LEA Notification" form is not received at the county Birth to 3 Program by the time a child is 30 months old, LEA Notification is sent to the LEA when the child is 30 months old. If a child's initial eligibility is determined within the six-month period before the third birthday, the county administrative agency will notify the LEA as soon as possible after determining the child's eligibility for Part C, unless the family signs the "Opting Out of LEA Notification" form and returns it within the specified ten days.

In addition, during the Transition Planning Conference or meeting to determine eligibility for special education services through the LEA, if the family chooses to provide consent for the transfer of additional information in the child's record, the family will sign a release that authorizes what additional information is to be shared, which could include (at the family's discretion):

1. Services child received while in the Birth to 3 program
2. Where the Birth to 3 program provided those services
3. Exit data on child outcomes
4. The developmental concerns the Birth to 3 program has regarding the child
5. The Individualized Family Service Plan (IFSP)
6. Progress Reports/Plan of Care
7. Evaluation Reports from: speech therapists, occupational therapists, physical therapists, special education teachers and others, as indicated

### **Agency Contact Person**

Lori Wittemann  
Department of Health Services/Birth to 3 Program  
1 W. Wilson St., Room B138  
PO Box 7851  
Madison, WI 53707  
Lori.wittemann@wisconsin.gov  
608/267-5150



The State of Wisconsin  
Department of Administration  
Bureau of Document Services  
Document Sales and Distribution Section  
P.O. Box 7840  
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