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Emergency Rules Now in Effect

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

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

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

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

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

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

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

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

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
Hearing Date: July 14, 2009

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

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
Extension Through: September 27, 2009
(except ss. Comm 5.30 (1) and 61.295 (2))
Effective: July 1, 2009 through November 27, 2009
Hearing Date: March 31, 2009

Commerce

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

EmR0910 — Rule adopted to create **Chapter Comm 100**, relating to tax benefits for job creation, capital investment, employee training, and corporate headquarters.

Exemption From Finding of Emergency

The Legislature, by section 9110 (4) in 2009 Wisconsin Act 2, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of the public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: June 30, 2009
Effective: June 30, 2009 through July 1, 2010 or the date permanent rules take effect, whichever is sooner

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.

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

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

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
Extension Through: September 25, 2009

Regulation and Licensing (2)

- 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

- 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

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.

Transportation

EmR0909 — Rule adopted amending section **Trans 315.03 (1) (a) and (c)**, relating to safety belt medical use exemption.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that the attached rule is necessary for the immediate preservation of public health and safety. Current federal law at 23 USC 406 provides safety belt performance grants to a state that has in effect and is enforcing a conforming primary safety belt use law for all passenger motor vehicles. A grant of federal funds estimated at roughly \$15,000,000 are available if this state is eligible on or before September 30, 2009; a secondary grant based on “share of unallocated funds,” estimated at not more than \$1,000,000, may be available if this state is eligible on or before June 30, 2009. The Wisconsin Legislature is currently deliberating a primary safety belt use law as part of the executive biennial budget bill, 2009 Assembly Bill 75, with the aim of qualifying for safety belt performance grants. Were the law timely enacted, this state could remain ineligible for safety belt performance grants because Department rules allow persons other than physicians to grant medical exemptions from safety belt use requirements. Immediate action is necessary to avoid forfeiting approximately \$16,000,000 in federal funds for highway safety activities. Increased use of safety belts has been shown to reduce the severity of injuries sustained in motor vehicle collisions, and limiting the medical use exemption to physicians would increase use of safety belts.

Publication Date: June 25, 2009
Effective: June 25, 2009 through
November 21, 2009
Hearing Date: September 8, 2009

Veterans Affairs

EmR0911 — Rule adopted to revise section VA 2.01, relating to the assistance to needy veterans grant program.

Finding of Emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is: The economic recession in effect for the last fiscal year has adversely affected the veteran population. Many veterans have lost their employment or had their scope of employment reduced. In addition to losing employment, many veterans have seen their health care reduced or eliminated. In order to serve the largest population of veterans and ensure minimal health care for that population, the department is requesting emergency rules to define “vision care and to limit the eligibility, by available funding, for “dental care”, “hearing care”, and “vision care”. These eligibility limitations, which address the cost, type and frequency of care available under the program, will allow more veterans in need to access the limited resources of this program.

Publication Date: July 1, 2009
Effective: July 1, 2009 through
November 27, 2009
Hearing Date: August 14, 2009

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 rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting an emergency is:

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

Scope Statements

Agriculture, Trade and Consumer Protection

Subject

Revises Chapter ATCP 92, relating to weights and measures licensing and fees.

Objectives of the Rule

- Implement weights and measures licensing changes made by 2009 Wis. Act 28 (biennial budget act).
- Modify the following weights and measures license fees and surcharges, as necessary, to fund inspection programs:
 - Weights and measures service companies – annual license fees and surcharges.
 - Certified weights and measures technicians – examination fee.
 - Vehicle scales – annual license fees and surcharges.
 - Retail food establishments – annual weights and measures license fees and surcharges.
- Establish new fees for the following, as provided by 2009 Wis. Act 28:
 - Permit fees for scale installation or construction.
 - Fees for variance from scale installation or construction standards.
 - Annual license fees and surcharges for vehicle tank meter operators.
 - Annual license fees and surcharges for liquefied petroleum gas meter operators.
 - Reinspection fees.

Policy Analysis

DATCP administers state laws to ensure that commercial weights and measures are accurate. Food, fuel, construction materials, and many other commodities are sold by weight or measure. According to the National Conference on Weights and Measures, the average U.S. family spends over half of its household budget on commodities that are sold by weight or measure. Inaccurate weights and measures can have an enormous financial impact on businesses and consumers. DATCP administers weights and measures standards, licenses certain weights and measures operations, and inspects for compliance.

The weights and measures program is funded by a combination of general program revenue (GPR) and program revenue (PR) derived from license fees. PR revenues currently fund over half of the weights and measures program. Most fees have not been unchanged since 1997. That, combined with inflationary pressures, means that the program's expenditures now exceed revenues. If nothing is done to address the revenue shortfall, the weights and measures PR account will have a negative cash balance by the end of FY 2012.

2009 Wisconsin Act 28 (biennial budget act) expanded weights and measures license requirements, and authorized DATCP to set license fees and surcharges by rule. The goal was to strengthen weights and measures regulation in key areas, provide a more equitable distribution of costs between

regulated entities, and to prevent a crippling budget shortfall. This rule implements the budget act. The budget act, and this rule, will affect the following weights and measures operations:

Weights and Measures Service Companies

DATCP currently licenses weights and measures service companies, and is authorized to adjust license fees and surcharges by rule. This rule may adjust current license fees and surcharges.

Weights and Measures Technicians

DATCP currently certifies individual technicians employed by weights and measures service companies. A certified technician must pass an examination and pay an examination fee that is set by rule. This rule may adjust the current examination fee.

Retail Food Establishments

DATCP currently licenses retail food establishments, and inspects those establishments for compliance with weights and measures standards. DATCP is authorized to adjust weights and measures license fees and surcharges by rule. This rule may adjust current license fees and surcharges.

Vehicle Scale Operators

DATCP currently licenses vehicle scale operators (a separate license is required for each vehicle scale), and is authorized to adjust license fees and surcharges rule. This rule may adjust current license fees and surcharges.

Vehicle Scales

Under 2009 Wisconsin Act 28, a person must obtain a DATCP permit for the construction or relocation of a vehicle scale. DATCP may, for good cause, allow variances from established construction standards. Persons requesting a permit or construction standard variance must pay a fee that DATCP must set by rule. This rule may set fees for vehicle scale permits and construction standard variances.

Vehicle Tank Meter Operators

Under 2009 Wisconsin Act 28, vehicle tank meter operators must be licensed by DATCP and must pay license fees and surcharges that DATCP must establish by rule. DATCP rules may also establish standards for the construction, operation, maintenance and testing of vehicle tank meters. This rule may do all of the following:

- Establish licensing standards and procedures.
- Establish license fees and surcharges.
- Establish standards for the construction, operation, maintenance and testing of vehicle tank meters.

LP Gas Meter Operators

Under 2009 Wisconsin Act 28, LP gas meter operators must be licensed by DATCP and must pay license fees and surcharges that DATCP must establish by rule. DATCP rules may also establish standards for the construction, operation, maintenance and testing of LP gas meters. This rule may do all of the following:

- Establish licensing standards and procedures.
- Establish license fees and surcharges.
- Establish standards for the construction, operation, maintenance and testing of LP gas meters.

Reinspections

Under 2009 Wisconsin Act 28, DATCP may charge a weights and measures reinspection fee that DATCP sets by rule if DATCP reinspects because of a law violation found upon initial inspection. This rule may establish weights and measures reinspection fees. Fees may be different for different types of weights and measures. Fees will not exceed reinspection costs.

Policy Alternatives

- Do nothing. This is not a real alternative because DATCP must, at a minimum, implement the requirements of 2009 Wis. Act 28. That includes establishing initial license fee levels for entities that are licensed for the first time under Act 28.
- No change to the current fee amounts. If DATCP does not increase current fee amounts for entities that it already licenses, DATCP will soon incur a negative balance in its weights and measures program account. That will cripple Wisconsin's weights and measures program, and put consumers and businesses at risk when they buy food, fuel, building supplies and other commodities sold by weight or measure.

Statutory Authority

Sections 93.07 (1), 97.30 (5), 98.16 (2), (2m), 98.18 (2), 98.224 (2), 98.245 (7m), and 98.255 (2), Stats.

Comparison with Federal Regulations

There are no federal weights and measures license or fee requirements. The National Institute of Standards and Technology has published model standards for various types of weights and measures, and weights and measures inspections. DATCP has adopted many of the NIST standards by rule.

Entities Affected by the Rule

This rule will protect the consuming public and businesses that buy food, fuel construction materials and other commodities by weight or measure. This rule may affect the following entities that may be regulated or required to pay additional fees under this rule:

- Weights and measures service companies.
- Weights and measures technicians.
- Retail food establishments.
- Vehicle scale operators and installers.
- Vehicle tank meter operators.
- LP gas meter operators.
- Businesses that sell products by weight or measure will be responsible for paying reinspection fees if they do not comply with ch. 98, Stats., or a rule promulgated under ch. 98, Stats.

Estimate of Time Needed to Develop the Rule

DATCP estimates that it will use approximately 0.1 FTE staff time to develop and adopt this rule. This includes research, drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. DATCP will assign existing staff to develop this rule.

Commerce*Licenses, Certifications and Registrations, Ch. Comm 5***Subject**

Revises Chapter Comm 5, relating to licenses, certifications and registrations.

Objectives of the Rule

The objective of the potential rulemaking project is to implement licenses, certifications and registrations mandated by legislation enacted during the 2009–2010 session. This includes the mandates of 2009 Wisconsin Act 16 relating to the licensing and regulation of thermal system insulation mechanics and of 2009 Wisconsin Act 28, s. 2155m, relating to construction contractor registration.

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

Policy Analysis

Chapter Comm 5 establishes licensing, certification and registration programs for a variety of building trades, both for individuals and businesses. Currently, under ch. Comm 5, no licensing program exists for thermal insulators. Failure to implement the statutory licensing mandates for thermal system insulation mechanics would be contrary to these legislative mandates.

The department administers a registration program for businesses engaged in building construction as contractors or subcontractors under ch. Comm 5. These rules, however, do not contain a means of assessing a forfeiture for non-compliance as mandated by Wisconsin Act 28. Implementing this statutory mandate would enhance the registration program.

Statutory Authority

Chapters 15, 20, 101 and 145, Stats., as affected by 2009 legislation.

Comparison with Federal Regulations

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

Entities Affected by the Rule

The 2009 legislation affects the following businesses and individuals: 1) certain thermal system insulators, and 2) all contractors and subcontractors associated with building construction who violate the law by not registering as a construction contractor with the department. Potentially, this could include general contractors, excavating contractors, fire alarm contractors, drywall contractors, insulation contractors, finish carpentry contractors, flooring contractors, framing carpentry contractors, glass and glazing contractors, equipment contractors, fire sprinkler contractors, masonry contractors, wall covering contractors, plumbing contractors, poured concrete foundation and structure contractors, roofing contractors, siding contractors, structural steel and precast concrete contractors and tile and terrazzo contractors.

Estimate of Time Needed to Develop the Rule

The department estimates about 200 hours will be needed to perform the review and develop any rule changes. The time includes reviewing current codes, meeting with advisory

councils, if necessary, drafting the rule changes and processing the changes through public hearings, legislative review and adoption. The department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

Corrections

Subject

Amends Chapter DOC 302, relating to changes in various statutory provisions relating to sentence calculations and prison release under 2009 Wis. Act 28.

Objective of the rule

The objective of the rule is to amend the rule to bring it into compliance with significant changes made in sentence calculations and releases from prison under 2009 Wis. Act 28, including:

1. Challenge incarceration program and the earned release program under ss. 302.045 and 302.05, Stats., respectively, as amended by 2009 Wis. Act 28, sections 2700–2712;
2. Release to extended supervision under s. 302.113 (9g), Stats., as renumbered and amended by 2009 Wis. Act 28, sections 2729j through 2738, for inmates who have extraordinary health conditions or who are either 60 or 65 and have served a certain portion of their period of incarceration;
3. Positive adjustment time under ss. 302.113 (2) (b), 304.06 (1) (bg) 1. and 2., as created by 2009 Wis. Act 28, sections 2722 and 2751;
4. Early release of certain inmates within 12 months of their release under s. 302.113 (9h), Stats., as created by 2009 Wis. Act 28, section 2739;
5. Risk reduction sentence under s. 973.031, Stats., as created by 2009 Wis. Act 28, section 3387t;
6. Risk assessment program under s. 302.042, Stats., as created by 2009 Wis. Act 28, section 2699m; and
7. Sentence calculations under s. 304.06 (1) (bg) 3. and 4., Stats., as created by 2009 Wis. Act 28, section 2751, for an inmate who has been convicted under s. 973.01, Stats., following the inmate's having served at least 75% or 85% of the confinement time of a bifurcated sentence, depending on the classification of the crime.

Policy Analysis

Currently, the Department is in the process of developing rules to amend chapter DOC 302. The Department intends to include in its proposed amendments changes necessitated by the passage of 2009 Wis. Act 28.

Statutory Authority

Sections 227.11 (2), 301.02, 301.03 (2), and 302.07, Stats.

Comparison with Federal Regulations

There is no federal regulation which addresses the subject of this rule.

Entities Affected by the Rule

This rule will affect inmates, offenders, district attorneys, public defenders, the courts, the Earned Release Review Commission (formerly the Parole Commission), victims of crimes, and the public.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 500 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

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.

Corrections

Subject

Creates section DOC 325.15, relating to the department's use of palliative care resources outside of the prison system to care for inmates with a terminal condition.

Objective of the rule

The objective of the rule is to establish procedures for the department to temporarily release inmates with a terminal condition to a palliative care facility (“Hospice”).

Policy Analysis

Currently, Chapter DOC 325 permits the department to temporarily release an inmate in order to receive medical treatment. Palliative care for an inmate with a terminal condition is not considered by the medical community to be medical treatment. The department seeks to amend the rule to specifically permit release for this purpose.

There are no alternative means to address the need for the rule.

Statutory Authority

Sections 227.11 (2), 301.02, and 301.03 (2), Stats.

Comparison with Federal Regulations

There are no federal regulations which address the release of state inmates for palliative care purposes.

Entities Affected by the Rule

This rule affects inmates with a terminal condition that are accepted for admission to a palliative care facility, staff and residents of a palliative care facility, victims, and department staff.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 40 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

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.

Corrections

Subject

Amends Chapter DOC 328, relating to the use of a risk assessment instrument in the supervision of probationers, parolees, and persons on extended supervision.

Objective of the rule

The objective of the rule is to reflect the changes in the law under 2009 Wis. Act 28, providing for the use of a risk assessment instrument in the supervision of offenders.

Policy Analysis

Currently, the Department is in the process of developing rules to amend Chapter DOC 328. The Department intends to include in its proposed amendments changes necessitated by the passage of 2009 Wis. Act 28.

There is no alternative means to address the need for revisions as discussed above.

Statutory Authority

Sections 227.11 (2), 301.02, 301.03 (2), and 302.11 (8), Stats.

Comparison with Federal Regulations

There are no federal regulations which address the supervision of persons on community supervision for violations of Wisconsin criminal statutes. However, under 4 USCA section 112, Congress has authorized the Interstate Corrections Compact which Wisconsin adopted and is found in s. 302.25, Wis. Stats. The ICC permits participating states to cooperate among themselves in the supervision of inmates and offenders.

Entities Affected by the Rule

This rule will affect persons on probation, parole, or extended supervision, and Department staff.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 400 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Corrections**Subject**

Amends section DOC 328.17, relating to the discharge of persons on extended supervision or probation, as provided under 2009 Wis. Act 28, sections 3378r and 3392d, respectively.

Objective of the rule

The objective of the rule is to reflect statutory changes under 2009 Wis. Act 28. Specifically, under 2009 Wis. Act 28, section 3378r, creating s. 973.01 (4m), Stats., the Department may discharge a person from extended supervision if the person has met the conditions of extended supervision and the reduction is in the interest of justice. In addition, under 2009 Wis. Act 28, section 3392d, creating s. 973.09 (3) (d), Stats., the Department may modify a person's period of probation and discharge the person from probation if the person has completed 50 percent of his or her period of probation.

Policy Analysis

Currently, the Department has rules governing the discharge of persons under its supervision, including in limited circumstances early discharge. (See section DOC 328.17, Wis. Adm. Code.) The Department intends to amend its rules in order to bring them into compliance with the new statutory provisions.

There is no alternative means to address the need for revisions as discussed above.

Statutory Authority

Sections 227.11 (2), 301.02, 301.03 (2), and 302.11 (8), Stats., and 2009 Wis. Act 28, section 3378r, creating s. 973.01 (4m) (c), Stats.

Comparison with Federal Regulations

There are no federal regulations which address the supervision of persons on community supervision for violations of Wisconsin criminal statutes. However, under 4 USCA § 112, Congress has authorized the Interstate Corrections Compact which Wisconsin adopted and is found in § 302.25, Wis. Stats. The ICC permits participating states to cooperate among themselves in the supervision of inmates and offenders.

Entities Affected by the Rule

This rule will affect persons on probation or extended supervision, victims, the public, and Department staff.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 300 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Corrections**Subject**

Amends Chapter DOC 331, relating to extended supervision and reconfinement hearings, as affected by 2009 Wis. Act 28.

Objective of the rule

The objective of the rule is to amend the rule chapter to bring it into compliance with changes made in extended supervision and reconfinement hearings by 2009 Wis. Act 28.

Policy Analysis

Currently, the Department is in the process of developing rules to amend Chapter DOC 331. The Department intends to include in its proposed amendments changes necessitated by the passage of 2009 Wis. Act 28.

Statutory Authority

Section 227.11 (2), Stats.

Comparison with Federal Regulations

There is no federal regulation which addresses the subject of this rule.

Entities Affected by the Rule

This rule will affect offenders, district attorneys, public defenders, the courts, victims of crimes, and the public.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 400 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

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**Subject**

Amends section GAB 6.02, relating to registration statement sufficiency.

Objective of the Rule

To clarify standards for sufficiency of committee registration statements filed under s. 11.05, Stats., and the process for correcting insufficient or incomplete statements.

Policy Analysis

The proposed rule will be drafted to update and clarify standards for the G.A.B. and local filing officers to evaluate compliance with the registration requirements of s. 11.05, Stats., and the manner of correcting insufficient or incomplete registration statements.

Statutory Authority

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

Comparison with Federal Regulations

Registration of political committees related to state and local elections and referendum questions is a state and local election function and not a function of the federal government. Federal regulations do not govern registration of such committees.

Entities Affected by the Rule

The Government Accountability Board and all municipal and county clerks and their staffs.

Estimate of Time Needed to Develop the Rule

10–20 hours of state employees' time.

Government Accountability Board**Subject**

Amends section GAB 6.04, relating to filing documents by facsimile (FAX) process.

Objective of the Rule

To update and clarify procedures for filing documents with the G.A.B. and local filing officers electronically and by facsimile.

Policy Analysis

The proposed rule will be drafted to update and clarify procedures for the G.A.B. and local filing officers to allow filing of certain documents electronically or by facsimile, and prohibiting the filing of other documents by such transmissions.

Statutory Authority

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

Comparison with Federal Regulations

Filing and processing of election and campaign finance documents related to state and local elections and referendum questions are state and local functions and are not functions of the federal government. Federal regulations do not govern procedures for filing such documents.

Entities Affected by the Rule

The Government Accountability Board and all municipal and county clerks and their staffs.

Estimate of Time Needed to Develop the Rule

10–20 hours of state employees' time.

Health Services [Amended]**Health, Chs. DHS 110—****Subject**

Revises Chapter DHS 124, relating to hospitals.

Objective of the rule

To specify standards relating to direct forfeiture assessments for a hospital's violation of s. 50.375 (2) or (3), Stats., relating to emergency contraception to sexual assault victims; to remove the existing rule requirements relating to anatomical gifts and replace the provisions with a cross-reference to the applicable provisions relating to anatomical gifts under s. 157.06 (14m), Stats.; and to include the requirements under s. 50.36, (5), Stats., relating to the training and proficiency of hospital personnel in the use of automated external defibrillators.

Policy Analysis

Section 50.377, Stats., authorizes the Department to directly assess forfeitures for violations by hospitals of s. 50.375 (2) and (3), Stats., relating to emergency contraception for sexual assault victims. The Department proposes to establish parameters by rule for assessing these forfeitures. There are no existing rules relating to forfeiture assessments for violations of s. 50.375 (2) and (3), Stats.

Section 157.06 (14m), Stats., relating to requirements and procedures for anatomical gifts, has been revised. The Department proposes amending ch. DHS 124 to conform to s. 157.06 (14m), Stats., by cross referencing applicable provisions of the statute.

The Department also proposes to amend ch. DHS 124 to specify compliance with requirements under s. 50.36, (5), Stats., relating to the training and proficiency of hospital personnel in the use of automated external defibrillators.

Statutory Authority

Sections 50.36 (1), 50.377, and 227.11 (2), Stats.

Comparison with Federal Regulations

Federal conditions of participation in Medicare that apply specifically to hospitals are in 42 CFR Part 482. These regulations establish condition and standards for the operation of hospitals that provide acute care service to patients. State and federal requirement for hospitals both address facility management, medical staff provision of health services and physical environment requirements. State requirements augment more general federal regulation by providing specificity in certain areas.

Entities Affected by the Rule

The entities that may be affected by these proposed rules are hospitals.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 200 hours of staff time to promulgate the proposed changes to ch. DHS 124.

Contact Information

Pat Benesh

Division of Quality Assurance

Phone: (608) 264–9896

Health Services [Amended]

Health, Chs. DHS 110—

Subject

Revises Chapter DHS 124, relating to hospitals.

Policy Analysis

The Department proposes to generally update ch. DHS 124 to eliminate overly prescriptive regulations; clarify the Department's enforcement authority; and align ch. DHS 124 with Medicare by requiring compliance with federal minimum standards of operation, maintenance and patient care. The proposed changes do not compromise the hospital patients' care and safety.

Section 50.36 (1), Stats., authorizes the Department to establish and enforce rules and standards for hospitals for the construction, maintenance, and operation of the hospitals deemed necessary to provide safe and adequate care and treatment of patients and to protect the health and safety of both patients and employees. These rules and standards are promulgated in ch. DHS 124, the state regulations relating to hospitals.

Through this rulemaking initiative, the Department proposes to clarify rule provisions relating to its enforcement authority because the existing enforcement language is subject to multiple interpretations and is a source of confusion to health care providers and the public. Current language in ch. DHS 124 authorizes the Department to withhold, suspend, or revoke a certificate of approval for failure to comply with a requirement of the chapter. The Department is seeking language to require hospitals to submit a plan of correction for violations of the rule. Requiring submission of a plan of correction reflects current Department practice, and is a reasonable and effective means of achieving correction.

Federal requirements addressing standards of operation, maintenance, and patient care are more current than the comparable state regulations in ch. DHS 124. Therefore, the Department is proposing to adopt the applicable federal standards. Current ch. DHS 124 language details how a hospital's governing body must organize itself, details the qualifications of nursing staff, and prescribes requirements for staff orientation and training. Concerns have been expressed that the current state code limits the ability to implement new or innovative approaches to ensure quality patient care. The Department's intent is to streamline ch. DHS 124 to allow for more efficient and effective regulation of hospitals.

Increasing interest from hospitals to make emergency care accessible through satellite locations has created the need for regulations for hospital emergency care satellite departments. The Department proposes to establish standards for the health, safety and welfare of patients receiving care in satellite emergency departments, including standards for provided services and the number and qualifications of personnel. There are no existing rules for hospital emergency care satellite facilities.

Statutory Authority

Sections 50.36 (1), (2) (b), and 227.11 (2), Stats.

Comparison with Federal Regulations

Federal conditions of participation in Medicare that apply specifically to hospitals are in 42 CFR Part 482. These regulations establish conditions and standards for the operation of hospitals that provide in-house acute care services to patients. State and federal requirements for

hospitals both address facility management, medical staff, provision of health care services, and physical environment requirements. State requirements augment more general federal regulations by providing specificity in certain areas.

Entities Affected by the Rule

The entities affected by these proposed rules are hospitals.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 1,000 hours of staff time to promulgate the proposed changes to ch. DHS 124.

Contact Information

Pat Benesh
Division of Quality Assurance
Phone: (608) 264-9896

Health Services

Health, Chs. DHS 110—

Subject

Revises Chapter DHS 196, and its Appendix, the Wisconsin Food Code.

Objective of the rule

To revise ch. DHS 196 to reflect current Department policy or practice and to update the Wisconsin Food Code to conform with the 2009 FDA model Food Code and to reflect modifications proposed by the National Conference on Food Protection (NCFP).

Policy Analysis

The Department, which regulates restaurants, and the Department of Agriculture, Trade, and Consumer Protection (DATCP), which regulates retail food establishments, such as grocery stores, jointly adopted the Wisconsin Food Code in 2001 for their respective regulatory activities. The existing Wisconsin Food Code, modeled after the 1999 FDA model Food Code, was last revised in 2005. The Department proposes to update the Wisconsin Food Code to the 2009 FDA model Food Code, which reflects current science and trends in food safety. Revisions to the Wisconsin Food Code will also reflect modifications proposed by the NCFP, as well as mutually agreed upon suggestions proposed by DATCP and the Wisconsin Food Code Revision Committee. The Department also proposes to clarify or correct areas of the Wisconsin Food Code that do not reflect current Department policy.

In addition to making revisions to the Wisconsin Food Code, the Department intends to propose changes to ch. DHS 196, relating to plan reviews, inspections and access to premises for food borne illness investigations, any changes needed to reflect and be consistent with the revisions made to the Wisconsin Food Code (DHS 196 Appendix), and any other changes necessary to update the rules.

These changes, which both the Department and DATCP intend to promulgate simultaneously, will positively affect operators of food service operations, state and local food safety inspectors, and the general public throughout the state by simplifying and clarifying the language of ch. DHS 196, the Wisconsin Food Code.

Statutory Authority

Sections 227.11 (2) (a), 227.14 (1s), and 254.74 (1), Stats.

Comparison with Federal Regulations

The FDA publishes the FDA model Food Code, to assist food safety jurisdictions at all levels of government by

providing them with a scientifically sound technical and legally enforceable basis for regulating the retail and food service industry. Local, state, tribal, and federal regulators use the FDA model Food Code to develop or update their own food safety rules and to be consistent with national food regulatory policy. The FDA model Food Code also serves as a reference of best practices for the retail and food service industries (restaurants, grocery stores and institutions such as nursing homes) on how to prevent foodborne illness. Nationally, over one million retail and food service establishments apply the FDA model Food Code provisions to their own operations.

Entities Affected by the Rule

Restaurants.

Estimate of Time Needed to Develop the Rule

One FTE for approximately 500 hours.

Contact Information

James Mack

Food Safety and Recreational Licensing

Phone: (608) 266–8351

Parole Commission

Subject

Repeals and recreates Chapter PAC 1, relating to changes in the law, including 2009 Wis. Act 28, and the operations and practices of the Parole Commission.

Policy Analysis

The current rule chapter is being reviewed and revised to reflect substantial changes to the law as a result of the enactment of 2009 Wis. Act 28, including renaming of the Parole Commission to the Earned Release Review Commission, establishing hearing procedures for inmates with an extraordinary health condition under 2009 Wis. Act §§ 2729j through 2738, and addressing statutory changes under 2009 Wis. Act § 2751, creating positive adjustment time and creating a procedure for release of a person who was convicted under § 973.01, Stats., following the person's having served at least 75% or 85% of the confinement time of a bifurcated sentence, depending on the classification of the crime.

In addition, since the rule chapter has not been amended since 1995, the Parole Commission intends to review the rule to assure consistency with current operations and practices.

Statutory Authority

Sections 227.11 (2) and 304.06 (1) (eg) and (em), Stats.

Comparison with Federal Regulations

There is no federal regulation which addresses the subject of this rule.

Entities Affected by the Rule

This rule will affect inmates, offenders, district attorneys, public defenders, the courts, victims of crimes, and the public.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 150 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Contact Information

Kathryn R. Anderson, Chief Legal Counsel, Dept. 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.

Public Instruction

Subject

Revises Chapter PI 35, relating to the Milwaukee Parental Choice Program fees.

Policy Analysis

2009 Wisconsin Act 28, the 2009–11 biennial budget bill, made several modifications to the Milwaukee Parental Choice Program under s. 119.23, Stats. Several of the modifications require that the department develop rules to implement the statutory provisions. One of those modifications requires the department to develop a rule to establish a fee to cover the cost of employing one full-time DPI auditor for the program (each private school participating in the program in the 2009–10 school year must pay the fee no later than 30 days after the effective date of the rule).

The Act requires emergency rules to be promulgated by September 1, 2009.

Policy Alternatives

The department is required to promulgate rules under s. 119.23 (2) (a) 3., Stats., and Section 9139 (3) and (4) of 2009 Wis. Act 28. Therefore, there are no alternatives to rule promulgation.

Statutory Authority

Section 119.23 (2) (a) 3., Stats.

Comparison with Federal Regulations

N/A

Entities Affected by the Rule

Private schools participating under the MPCP program.

Estimate of Time Needed to Develop the Rule

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

Public Instruction

Subject

Creates a new chapter relating to revenue limits for energy efficiency.

Policy Analysis

2009 Wisconsin Act 28, the 2009–11 biennial budget bill, allows a school board to increase its revenue limit in any school year by the amount spent by the school district in that school year on energy efficiency measures and renewable energy products that result in the avoidance of, or reduction in, energy costs.

The Act requires the department to promulgate rules to administer this provision, including eligibility standards for school districts.

Rules will need to be developed as soon as possible as November 6 (school district tax levy due date) is the deadline for determining revenue limits for the 2009–10 school year.

Policy Alternatives

The department is required to promulgate rules under s. 121.91 (4) (o) 1., Stats. Therefore, there are no alternatives to rule promulgation.

Statutory Authority

Section 121.91 (4) (o) 1., Stats.

Comparison with Federal Regulations

N/A

Entities Affected by the Rule

School districts.

Estimate of Time Needed to Develop the Rule

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

Public Instruction

Subject

Creates a new chapter relating to a tribal language revitalization grant.

Policy Analysis

2009 Wisconsin Act 28, the 2009–11 biennial budget bill, created a new grant program relating to tribal language revitalization. Beginning in the 2009–10 school year, the Act appropriated \$247,500 annually from Indian gaming money. Further, the Act requires the department to promulgate rules to administer the grant program to support innovative, effective instruction in one or more American Indian languages. A school board or cooperative educational service agency (CESA) may apply to the department for a grant.

Rules will need to be developed as soon as possible so awards can be made for the upcoming school year.

Policy Alternatives

The department is required to promulgate rules under s. 115.745 (3), Stats. Therefore, there are no alternatives to rule promulgation.

Statutory Authority

Section 115.745 (3), Stats.

Comparison with Federal Regulations

N/A

Entities Affected by the Rule

A school board or CESA in conjunction with a tribal education authority may apply to the department for a grant.

Estimate of Time Needed to Develop the Rule

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation

process is fairly significant. The rule process takes more than six months to complete.

Revenue

Subject

Revises section Tax 1.16, relating to financial record matching.

Objective of the rule

The objective of the proposed rule is to specify the procedures under which the Department shall enter into agreements with financial institutions doing business in Wisconsin to operate the financial record matching program under s. 71.91(8), Stats.

Policy Analysis

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

Statutory Authority

Section 71.91 (8) (b), Stats.

Comparison with Federal Regulations

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

Entities Affected by the Rule

Financial institutions, as that term is defined in s. 49.853 (1) (c), Stats., doing business in Wisconsin.

Estimate of Time Needed to Develop the Rule

The department estimates it will take approximately 80 hours to develop this rule order.

Contact Information

Dale Kleven

Phone: (608) 266–8253

Email: dale.kleven@revenue.wi.gov

Revenue

Subject

Revises Chapters Tax 2 and 11, relating to the Failure to Produce Records penalty.

Objective of the rule

Provide guidance to Department employees and taxpayers so that the new penalty can be administered in a fair and consistent manner.

Policy Analysis

As directed by the Joint Finance Committee, new policies are established for the administration of the new penalty to provide a standard response time, a standard for noncompliance and penalty waivers related to the penalty established for failure to produce records.

Statutory Authority

Sections 71.80 (9m) and 77.61 (16), Stats., as affected by 2009 Wis. Act 28.

Comparison with Federal Regulations

N/A

Entities Affected by the Rule

Any entity that is under audit by the Department.

Estimate of Time Needed to Develop the Rule

The department estimates it will take approximately 40 hours to develop this rule order.

Contact Information

Dale Kleven

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Workforce Development***Labor Standards, Chs. DWD 270–279*****Subject**

Creates Chapter DWD 273, relating to the regulation of traveling sales crews.

Objective of the rule

2009 Wisconsin Act 3 requires the Department of Workforce Development to promulgate rules to enforce section 103.34, Wis. Stats., which regulates traveling sales

crews. The rules are required to establish: (a) a fee for obtaining a certificate of registration for a traveling sales crew, (b) minimum requirements for the issuance of a certificate of registration, and (c) standards for the safe transportation of crew members, the safe handling of hazardous materials, and the training of traveling sales crews on these topics.

Policy Analysis

This proposed rule is a new policy, proposed under a new statute in accordance with the instructions provided in 2009 Wisconsin Act 3.

Statutory Authority

Section 103.34 (13), Stats.

Comparison with Federal Regulations

There are currently no federal regulations on this topic.

Entities Affected by the Rule

Employers that send traveling sales crews into Wisconsin or that recruit for traveling sales crews in Wisconsin.

Estimate of Time Needed to Develop the Rule

120 hours.

Submittal of Rules to Legislative Council Clearinghouse

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

Children and Families

Family and Economic Security, Chs. DCF 101–153 **CR 09–059**

On August 3, 2009, the Department of Children and Families submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter DCF 120, relating to emergency assistance for needy families and affecting small business.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 2, 2009. The organizational unit responsible for the promulgation of the proposed rules is the DCF Division of Family and Economic Security.

Contact Information

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Employee Trust Funds

CR 09–057

On July 30, 2009, the Department of Employee Trust Funds submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order relates to technical and minor substantive changes in Chapters ETF 10, 11, 20, 52 and 60.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 10, 2009. The Department’s General Counsel is primarily responsible for the promulgation of this rule.

Contact Information

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

Financial Institutions — Securities

CR 09–056

On July 28, 2009, the Department of Financial Institutions, Division of Securities, submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters DFI–Sec 1 to 5, 7 and 9, relating to minor revisions to securities administrative code

sections for conformity with Wisconsin securities statutes, filings, and securities agent examination matters.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 21, 2009. The Division of Securities is primarily responsible for the promulgation of this rule.

Contact Information

Mark Schlei, Deputy General Counsel
Phone: (608) 267–1705

Insurance

CR 09–055

On July 20, 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 revises section Ins 17.28 (3h), relating to supervision and direction.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 9, 2009.

Contact Information

A copy of the proposed rule may be obtained from the website at: <http://oci.wi.gov/ocirules.htm> or by contacting:
Inger Williams
Public Information and Communications
Phone: (608) 264–8110

For additional information, please contact:

Theresa L. Wedekind, OCI Legal Unit
Phone: (608) 266–0953
Email: theresa.wedekind@wisconsin.gov

Transportation

CR 09–058

On July 31, 2009, the Department of Transportation submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter Trans 315, relating to safety belt medical use exemption.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 8, 2009. The Division of State Patrol is primarily responsible for the promulgation of this rule.

Contact Information

Julie A. Johnson, Paralegal
Phone: (608) 267–3703

Rule–Making Notices

Notice of Hearing

Children and Families

Family and Economic Security, Chs. DCF 101–153

CR 09–059

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.138 and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold a public hearing to consider rules relating to emergency assistance for needy families.

Hearing Information

September 2, 2009	MADISON
Wednesday	GEF 1 Building
1:30 p.m.	201 E. Washington Avenue Room H204

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

If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267–9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Copies of Proposed Rule

A copy of the proposed rules is available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule’s promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

Elaine Pridgen
Office of Legal Counsel
Department of Children and Families
201 E. Washington Avenue
Madison, WI 53707
(608) 267–9403
elaine.pridgen@wisconsin.gov

Submission of Written Comments

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than September 2, 2009, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by the Department of Children and Families

Statutory authority

Sections 49.138 and 227.11 (2) (a), Stats.

Statutes interpreted

Section 49.138, Stats.

Related statutes or rules

Section 846.35, Stats., as created by 2009 Wisconsin Act 2; Section 16.957, Stats., and Chapter Adm 45.

Explanation of agency authority

Section 49.138, Stats., provides that the Department shall implement a program of emergency assistance to needy persons in cases of fire, flood, natural disaster, homelessness or impending homelessness, or energy crisis. Needy person has the meaning specified by the Department by rule. There are 6 criteria under which a family may be considered to be homeless or to be facing impending homelessness. One of these criteria is if the family is without a fixed, regular, and adequate nighttime residence.

The Department shall establish the maximum amount of aid to be granted, except for cases of energy crisis, per family member.

Summary of the rule

Eligibility for tenants facing impending homelessness because of a foreclosure action

Under the current rule on Emergency Assistance, a group in rental housing that is facing impending homelessness because of a foreclosure action against their landlord is not eligible for assistance to obtain a new permanent living accommodation. To be eligible for Emergency Assistance for impending homelessness a group must be experiencing a financial crisis that makes it very difficult to make a rent payment, mortgage payment, or property tax payment and have been notified that they will be required to leave their current housing if they do not make that payment immediately.

In 2008, foreclosure filings in Wisconsin were 62% higher than in 2007 and were 249% higher than in 2006. The Joint Center for Housing Studies estimates that investor–owned one– to four–family rental properties account for nearly 20% of all foreclosures nationally. Despite the fact that low income families generally know that Emergency Assistance is not available for renters losing their housing due to a foreclosure action against the owner, at least 18 families in this situation have applied for Emergency Assistance at Milwaukee Wisconsin Works (W–2) agencies in recent months.

Renters of properties in foreclosure can be even more vulnerable to homelessness than owners because tenants often have limited notice of the foreclosure and few resources to allow them to obtain replacement housing quickly. Until the recent enactment of s. 846.35 Stats., as created by 2009 Wisconsin Act 2, there was no requirement of notice to tenants in foreclosure of residential rental property. Section 846.35, Stats., provides that the plaintiff in an action for foreclosure of residential rental property must notify the tenant at filing of the action, when judgment is entered, and when the hearing to confirm the sale of the property has been scheduled. In addition, a tenant may retain possession of the rental unit for up to 2 months after the end of the month in which the sale of the property is confirmed. These new protections for tenants apply to foreclosure actions that are commenced on or after March 5, 2009.

The proposed rule will provide that a group in rental housing that is facing impending homelessness because of a foreclosure action against their landlord will be eligible for

Emergency Assistance to obtain a new permanent living accommodation. To be eligible for assistance, the group must have received written or oral notice that they will be removed from their rental housing because of a foreclosure action against the owner, the removal of the group from the rental housing is scheduled to occur within 30 days, and the group needs emergency assistance to obtain a new permanent living accommodation. The W–2 agency will verify eligibility.

Financial eligibility

Under the current rule, the W–2 agency’s determination of financial eligibility is based on total financial need. Total financial need is determined adding all unpaid expenses for the group and the costs of needs due to the emergency and subtracting all available income and resources. The rule provides a list of 9 types for needs due to the emergency. Income is determined in the same manner as the W–2 program, except income from W–2 benefits, kinship care payments, SSI, and SSI supplemental payments for children of recipients is disregarded. There is a \$3,000 asset limit.

W–2 agencies and others have found this methodology for determining financial eligibility to be confusing, time–consuming, and cumbersome. The proposed rule repeals and recreates the methodology for determining financial eligibility to make it similar to W–2. The proposed rule provides that the gross income of the emergency assistance group may not exceed 115% of the poverty line. The W–2 agency will determine income in the same manner as W–2, with income disregards for kinship care payments and foster care payments if the foster payment is on behalf of a child who is a relative. Foster care payments are added as an income disregard because under the graduated licensing system for foster care in 2009 Wisconsin Act 28, some caretaker relatives who are currently receiving kinship care payments will instead be receiving foster care payments when the new foster care licensing system is implemented in 2010. To facilitate automation of emergency assistance eligibility determination by making it the same as W–2, the proposed rule repeals the exclusion of Supplemental Security Income payments and SSI supplemental payments for children of recipients and changes the emergency assistance asset limit to \$2,500.

Payment amounts for types of need other than energy crisis

Section 49.138, Stats., provides that the Department shall establish the maximum amount of aid to be granted, except for cases of energy crisis, per family member. Under the current rule, the payment amount for fire, flood, natural disaster, homelessness, and impending homelessness is the lowest of the following:

- The total of the maximum payment amount per group member multiplied by the number of members of the Emergency Assistance group.
- The amount requested by the group.
- Financial need.

Maximum payment amount multiplied by number in group. For many years, the maximum payment amount per group member has been \$150. A 2–person group is eligible for a grant of \$300 and a 3–person group is eligible for a grant of \$450. The current grant amounts for homelessness and impending homelessness are insufficient for smaller households to obtain or retain a permanent living accommodation. The Department’s analysis of housing costs for low–income families found that average rental costs are higher than \$470 for the smallest households in the counties where a majority of Emergency Assistance grants are issued,

and rent does not increase proportionally with each new group member. Housing costs for families with 2 – 4 members are similar, and housing costs for families of 5 or more are similar with some increases for larger families. In SFY 09, Emergency Assistance grants issued to smaller size families of 2 to 3 members were 55.2% of total grants.

The proposed rule changes the payment amounts that eligible families will receive by increasing the amounts for smaller size families and decreasing the amounts for larger size families. The amounts were arrived at by attempting to make the overall fiscal impact cost neutral and within the existing amount of funds allocated for the Emergency Assistance program. The maximum payment amounts will be \$258 per group member when the group is 2 members, \$172 per group member when the group is 3 members, \$129 per group member when the group is 4 or 5 members, and \$110 per group member when the group is 6 or more members. This will result in the following total payment amounts:

2 to 4 members	\$516
5 members	\$645
6 members	\$660
7 + members	\$110 for each additional member

Notice of changes to the maximum payment amounts will be published in the Administrative Register.

The rule complies with the statutory requirement that the Department establish the maximum amount of aid to be granted per family member by having different maximum payment amounts for members of groups of different sizes.

Amount requested by the group. The proposed rule repeals the “amount requested by the group” as an option for the payment amount to ensure that families do not receive a smaller payment because they were not informed of the full payment for which they were eligible.

Financial need. Under the current rule, when a payment is based on financial need, the amount is determined by adding all unpaid expenses for the group and the costs of needs due to the emergency and subtracting all available income and resources. The rule provides a list of 9 types of needs due to the emergency.

The proposed rule provides for payment amounts based on financial need that are specific to the type of need. For need due to impending homelessness, a payment based on financial need would be the amount of unpaid rent and related late fees and court costs. For need due to homelessness, a payment based on financial need would be the amount of the first month’s rent, security deposit, and necessary household items. For need due to fire, flood, or natural disaster, the payment based on financial need would be the total need in any of the following categories: temporary housing, first month’s rent and security deposit, clothing, food, medical care, transportation, necessary appliances and household items, and necessary home repairs.

Energy crisis

Under the current rule, an Emergency Assistance group is eligible for assistance if need has resulted from an emergency due to energy crisis, including lack of or imminent loss of essential home heating, with an immediate threat to the health or safety of the group either existing or likely to exist. The payment amount is the lowest of the amount requested by the group or the total financial need due to the emergency. Financial need may include heating fuel, electricity, and repair or replacement services necessary to obtain or maintain the basic heat and electricity requirements of an average household.

There is currently no maximum payment amount for Emergency Assistance due to an energy crisis. For all other types of need, there is a maximum payment amount based on group size. The average Emergency Assistance grant for all types of need is approximately \$512. Some grants for energy crisis have been as high as \$3,300. From July 2007 to September 2008, approximately 6% of Emergency Assistance grants for energy crisis were \$1,000 or above, totaling over \$41,000.

This proposed rule establishes a maximum payment amount per group for need due to energy crisis. The initial maximum payment amount will be \$500 and changes to that amount will be announced in the Administrative Register. A group is eligible for assistance if the group meets the following criteria:

- The group has exhausted resources available through the Wisconsin Home Energy Assistance Program (WHEAP), assistance available through local utility companies as required by the Public Service Commission, and any other available energy resources.
- The group needs financial assistance to obtain or maintain essential utility service.
- The lack or imminent loss of essential utility service is or is likely to be an immediate threat to the health or safety of the group.
- The energy crisis is due to reasons beyond the control of an adult member of the group or constitute good cause as determined by the W–2 agency.

The WHEAP program had \$147 million available for low income energy assistance this past heating season. The total Emergency Assistance available for all types of emergency for FY10 is \$6.5 million.

Summary of factual data and analytical methodologies

The policy changes in this rule are based on recommendations of a workgroup comprised of representatives of W–2 agencies and advocacy groups.

Impending homelessness due to foreclosure.

Section 49.138 (1m) provides that a family is homeless or facing impending homelessness if the family is not in a fixed, regular, and adequate residence. A family is not in a fixed, regular, and adequate residence if they have been notified that they will be removed from their rental housing due to a foreclosure action against the owner and the removal of the group is scheduled to occur within 30 days.

The statistics on the increase in foreclosures in Wisconsin are from *Home foreclosures up 81% in U.S., 62% in Wisconsin*, <http://www.madison.com>, January 15, 2009.

The estimate on the number of foreclosures that are one–to four–family rental properties is by Nicolas P. Retsinas, Director of the Joint Center for Housing Studies, quoted on the website of the National Coalition for the Homeless, <http://www.nationalhomeless.org/foreclosure/index.html>, March 9, 2009.

Payment amounts

The Department analysis of the housing costs of low–income families is based on data from the Food Share program for December 2007.

Energy crisis

Section 49.138 (1m), Stats., provides that the Department shall establish the maximum amount of aid to be granted, except for cases of energy crisis, per family member. The statute is silent on whether the Department may establish a maximum payment amount based on any criteria other than

per family member for cases of need due to energy crisis. The rule establishes a maximum payment amount per group regardless of group size.

Comparison with federal requirements

Emergency Assistance is a Temporary Assistance to Needy Families (TANF) program option available to states under previous Aid to Families with Dependent Children (AFDC) statutes to provide short–time assistance to needy families with children. Wisconsin chose to continue the Emergency Assistance program when Wisconsin repealed the AFDC program and accepted federal TANF block grant funds.

There are no federal requirements related to this rule, except that TANF funds must be used to provide assistance to families with children.

Comparison with rules in adjacent states

None of the adjacent states appear to have an Emergency Assistance program that is as similar to the AFDC–related Emergency Assistance program as that of Wisconsin. These states do have a variety of crisis assistance and prevention programs that are administered in different ways. The programs are generally not limited to families with children.

Analysis used to determine effect on small businesses

W–2 agencies will be affected by the proposed rule, but the effect will be minimal. Agency representatives have requested these changes.

Small Business Impact

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

The Department’s Small Business Regulatory Coordinator is Elaine Pridgen, (608) 267–9403, elaine.pridgen@wisconsin.gov.

Fiscal Estimate

Assumptions used in arriving at fiscal estimate

The proposed rule changes the amounts eligible families would receive by increasing the amounts for smaller size families and decreasing the amounts for larger size families. The amounts were arrived at by attempting to make the overall fiscal impact cost neutral that is within the existing amount of funds allocated for emergency assistance. Average family sizes receiving emergency assistance grants in SFY 07–08 were used in the calculation.

The rule also changes the amount payable to an eligible family due to energy crisis from the current unlimited level to a maximum of \$500. This change will allow the agency to use funds otherwise going to pay for energy services to pay for other emergencies.

In addition, the rule allows a payment to families who are renters and in a situation where the building they are living in is subject to foreclosure. While this will increase the number of cases eligible for emergency assistance it is estimated to be within what the current allocation can absorb.

The proposed rule also changes the method for determining financial eligibility to make it similar to the eligibility criteria for W–2. This change is not expected to have a significant fiscal effect because many agencies already applied the W–2 criteria due to confusing language in the current rule.

State fiscal effect

None.

Local government fiscal effect

None.

Long–range fiscal implications

None.

Agency Contact Person

Rebecca Swartz, Bureau of Working Families, (608) 266–1717, rebecca.swartz@wisconsin.gov.

Notice of Hearing
Employee Trust Funds
CR 09–057

The Wisconsin Department of Employee Trust Funds proposes an order to revise Chapters ETF 10, 11, 20, 52, and 60, relating to technical and minor substantive changes in existing ETF administrative rules.

Hearing Information

A public hearing on this proposed rule will be held:

September 10, 2009 Conference Room GB
 at 1:00 p.m. Dept. of Employee Trust Funds
 801 West Badger Road
 Madison, Wisconsin

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

Submission of Written Comments

Written comments on the proposed rule may be submitted to David Nispel, General Counsel, Department of Employee Trust Funds, 801 W. Badger Road, P. O. Box 7931, Madison, WI 53707. Written comments must be received at the Department of Employee Trust Funds no later than 4:30 p.m. on Friday, September 11, 2009.

Copies of Proposed Rule

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

Analysis Prepared by the Department of Employee Trust Funds**Statute interpreted**

Various statute sections in ch. 40, Wis. Stats., regarding the Public Employee Trust Fund.

Statutory authority

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

Explanation of agency authority

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

Related statute or rule

The various statute sections in ch. 40, Wis. Stats., and the existing administrative rules promulgated by the Department of Employee Trust Funds are related to this technical rule.

Plain language analysis

The purpose of this rule is to revise existing administrative rules of the Department of Employee Trust Funds to reflect enactment of 2007 Wisconsin Act 131, other changes made to ch. 40, Wis. Stats., and current practices of the department.

Comparison with federal regulations

The only federal regulations that may be affected by this proposed rule are provisions of the Internal Revenue Code regulating qualified pension plans. The Wisconsin Retirement System is required to be maintained as a qualified plan by s. 40.015, Stats.

Comparison with rules in adjacent states

Periodically, retirement systems in adjacent states promulgate technical rules to update existing administrative rules.

Summary of factual data and analytical methodologies

The department is proposing this rule to update existing rules and create other rules in light of 2007 Wisconsin Act 131, and in order to reflect current interpretations of existing statutes.

Analysis and supporting documents used to determine effect on small business

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

Small Business Impact

There is no effect on small business.

Fiscal Estimate

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

Agency Contact Person

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

Notice of Hearing
Financial Institutions — Securities
CR 09–056

NOTICE IS HEREBY GIVEN That pursuant to ss. 551.406 (5), 551.605 (1), and 227.11 (2), Stats., the Department of Financial Institutions, Division of Securities will hold a public hearing to consider a rule revising Chapters DFI–Sec 1 to 5, 7, and 9, relating to minor revisions to securities administrative code sections for conformity with Wisconsin securities statutes, filings, and securities agent examination matters.

Hearing Information

The hearing will be held:

September 21, 2009 Dept. of Financial Institutions
 at 9:00 a.m. 345 W. Washington Avenue
 5th Floor
 Madison, Wisconsin

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

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency's internal processing of the proposed rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708–8861, tel. (608) 267–1705, e-mail mark.schlei@wisconsin.gov. A copy of the proposed rule

may also be obtained and reviewed at the Department of Financial Institution’s website, www.wdfi.org. Written comments must be received by the conclusion of the department’s hearing regarding the proposed rule.

For substantive questions on the proposed rule, contact Randall Schumann, Attorney, Department of Financial Institutions, Division of Securities, P.O. Box 1768, Madison, WI 53701–1768, tel. (608) 266–3414, e–mail randall.schumann@wisconsin.gov.

Analysis Prepared by the Department of Financial Institutions, Division of Securities

Statute interpreted

Section 551.615, Stats.

Statutory authority

Sections 551.406 (5), 551.605 (1), and 227.11 (2), Stats.

Related statute or rule

None.

Explanation of agency authority

Pursuant to ch. 551, Stats., the department regulates securities.

Summary of proposed rule

The purpose of the rule is as follows:

Section 1. These amendments are necessary to clarify that these apply to federally–covered advisors, their investment adviser representatives and state advisers, and also to correct cross references.

Section 2. This section can be repealed as duplicative to the definition in s. 551.102(11)(m), Stats.

Section 3. As a result of 2007 Wisconsin Act 196, these exemptions are no longer necessary.

Section 4. These sections can be repealed because of the language and scope of the merger/reorganization and employee benefit plan registration exemptions resulting from 2007 Wisconsin Act 196.

Section 5. These amendments provide for an electronic filing alternative (to the existing hard copy notice filing provision) for federal Regulation D/Rule 506 securities offerings that are or will be made in Wisconsin.

Section 6. This amendment provides specific recognition of electronic prospectus delivery modes that comply with federal requirements on the subject.

Section 7. The amendment to s. DFI–Sec 4.01 (3) clarifies that if an applicant has received a waiver, he or she need not again take and pass such exams. The amendments to s. DFI–Sec 4.01 (4) (e) to (g) clarify that the even though the applicant may receive a waiver, it does not relieve the applicant from passing one of the state law exams.

Section 8. Section DFI–Sec 5.01 (4) (a) embodies two distinct waiver concepts that are best separated, and the amendment eliminates a conflict with (b). Amending s. DFI–Sec 5.01 (4) (b) preserves the minimum qualification standard envisioned by s. DFI–Sec 5.01 (3).

Section 9. Corrects a citation.

Section 10. Is necessary to provide the exemption from registration for investment adviser representatives of noticed filed federal covered investment advisers in order to comply with the provisions of federal law.

Section 11. Because of the change from “licensing” to “registration” for broker–dealer and investment adviser matters, these amendments help differentiate between “licensee” matters and registration of securities matters.

Section 12. Form IAR (WI) is no longer necessary because renewals are handled via IARD, and form IAUSR(WI) will be discontinued as part of the application process.

Comparison with federal regulations

There are no newly–developed or proposed federal regulations addressed by this rule. However, Wisconsin Securities Law and rules are generally coordinated with corresponding federal requirements, pursuant to s. 551.615, Stats.

Comparison with rules in adjacent states

These rule chapters reflect the 2002 Uniform Securities Act which Iowa and Minnesota have adopted and written rules; Illinois and Michigan have not.

Summary of factual data and analytical methodologies

The division applied its own experience in its regulation of securities generally for the minor clarifications, corrections, revisions and examination matters addressed by the rule.

Small Business Impact

The rule makes minor clarifications, corrections and revisions for conformity with existing statutes; imposes no additional substantive requirements; and reduces the same.

Fiscal Estimate

The rule places no additional duties or burdens on state or local government, and hence has no affect on costs to either.

Notice of Hearing

Insurance

CR 09–055

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth under s. 227.18, Stats., the Office of the Commissioner of Insurance will hold a public hearing to consider the adoption of the proposed rulemaking order affecting Section Ins 17.28 (3h), Wis. Adm. Code, relating to supervision and direction.

Hearing Information

Date: September 9, 2009

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

Place: OCI, Room 227 (2nd Floor)
125 South Webster Street
Madison, WI

Submission of Written Comments

Written comments can be mailed to:

Theresa L. Wedekind
OCI Rule Comment for Rule Ins 1728
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707–7873

Written comments can be hand delivered to:

Theresa L. Wedekind
OCI Rule Comment for Rule Ins 1728
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703–3474

Comments can be emailed to:

Theresa L. Wedekind
theresa.wedekind@wisconsin.gov

Comments submitted through the Wisconsin Adm. 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 14th day after the date for the hearing stated in this Notice of Hearing.

Copies of Proposed Rule

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

Analysis Prepared by the Office of the Commissioner of Insurance

Statutes interpreted

Section 655.005 (2) (a), Stats.

Statutory authority

Sections 601.41 (3) and 655.004, Stats.

Explanation of agency authority

The commissioner of insurance may promulgate such rules under ch. 227 as are necessary to enable the performance of responsibilities under chapter 655 Stats.

Related statutes or rules

None

Plain language analysis

This rule clarifies what constitutes direction and supervision of a health care provider’s employees defined under s. 655.001 (7t), Wis. Stats., as it relates to the health care provider having employee coverage under the fund.

Comparison with federal regulations

To the fund board’s and OCI’s knowledge there is no existing or proposed federal regulation that is intended to address patient compensation fund administration.

Comparison of rules in adjacent states

To the fund board’s and OCI’s knowledge there are no similar rules in the adjacent states to compare this rule to as none of these states have a patients compensation fund created by statute.

Summary of factual data and analytical methodologies

The fund’s board of governors established a special committee to review issues related to fund coverage. The committee determined that a rule was needed to clarify the meaning of direction and supervision of health care practitioners. The committee recommended to the board the proposed language and the recommendation was approved by the board.

Small Business Impact

This rule does not impose any additional requirements and will have 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

Fiscal Estimate

Assumptions used in arriving at fiscal estimate

The Injured Patients and Families Compensation Fund (IPFCF or Fund) is a segregated fund that provides excess medical malpractice coverage to Wisconsin health care providers. Chapter 655, Wis. Stats., provides employee coverage to health care providers although specific health care practitioners must practice under the supervision and

direction of a physician or CRNA. This rule clarifies supervision and direction and has no fiscal effect.

There is no effect on GPR.

State fiscal effect

None.

Local government fiscal effect

None.

Private sector fiscal effect

None.

Long–range fiscal implications

None.

Agency Contact Person

Inger Williams, OCI Services Section, at:

Phone: (608) 264–8110

Email: inger.williams@wisconsin.gov

Address: 125 South Webster Street, 2nd Floor
Madison, WI 53703–3474

Mail: PO Box 7873
Madison, WI 53707–7873

Notice of Hearing Transportation CR 09–058

NOTICE IS HEREBY GIVEN that pursuant to ss. 84.015, 84.41 (7) and 347.48 (2m) (e), Stats., the Department of Transportation will hold a public hearing to consider the amendment of Chapter Trans 315, Wis. Adm. Code, relating to safety belt medical use exemption.

Hearing Information

The hearing will be held:

September 8, 2009 Hill Farms State Transportation Bldg.
at 10:00 AM Room 144–B
4802 Sheboygan Avenue
Madison, WI

An interpreter for the hearing impaired will be available on request for this hearing. Parking for persons with disabilities and an accessible entrance are available.

Submission of Written Comments and Agency Contact

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at either hearing. Any such comments should be submitted to Laura Andreasson, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7936, Madison, WI 53707–7936. You may also contact Laura by phone at (608) 267–5136 or via e–mail at laura.andreasson@wisconsin.gov.

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>.

Copy of Proposed Rule

A copy of the rule may be obtained upon request from Laura Andreasson, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7936, Madison, WI 53707–7936. You may also contact Ms. Andreasson by phone at (608) 267–5136.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted

Section 347.48 (2m) (e), Stats.

Statutory authority

Sections 84.015, 84.41 (7) and 347.48 (2m) (e), Stats.

Explanation of agency authority

Current law requires every person over 8 years of age to be properly restrained by a safety belt whenever traveling in a motor vehicle. Current law allows the Department to exempt from this safety belt use requirement any person who, because of a physical or medical condition, cannot properly be restrained in a safety belt. Department rules authorize physicians, chiropractors and Christian Science practitioners to grant exemptions from wearing safety belts. Federal law makes highway safety grant moneys available for safety belt use requirements, but federal law recognizes only medical exemptions issued by physicians. Federal grant moneys expire on July 1, 2009, and this state may not qualify for approximately \$15,000,000 in federal moneys if persons other than physicians are authorized to exempt persons from safety belt use laws.

Related statute or rule

23 USC 406, 71 Fed. Reg. 4196 (Jan. 25, 2006).

Plain language analysis

This rule making deletes authority of any person other than physicians to exempt persons from safety belt use requirements. This rule making will result in increased use of safety belts, and increase receipt of federal moneys for highway safety activities.

Comparison with federal regulations

Federal policy states that safety belt use requirements do not apply to, “Persons with medical conditions who are unable to use a safety belt, provided there is written documentation from a physician.” The Department’s current rules go further by allowing chiropractors and Christian Science practitioners to grant those exemptions.

Comparison with rules in adjacent states

Michigan

Mich. Comp. Laws. Annot. 257.710e(1)(e) exempts a person who possesses a written statement from a physician from safety belt use requirements. The Department was unable to identify any administrative rules on this topic.

Minnesota

Minn. Stats. Annot. § 169.686 (2)(3) allows physicians to exempt persons from safety belt use requirements. The Department was unable to identify any administrative rules on this topic.

Illinois

92 IL Admin. Code 1030.84 exempts from safety belt use requirements only to a person “possessing a written statement from a physician that the person is unable, for medical or physical reasons, to wear a seat safety belt.”

Iowa

IA Admin. Code 761–600.16(321) authorizes physicians and chiropractors to exempt a person from safety belt use requirements for medical reasons. The Department identified no authority for Christian Science practitioners to exempt persons from safety belt use requirements.

Summary of factual data and analytical methodologies

None. NHTSA legal counsel informed the Department that in order to qualify for funds under 23 USC 406, any administrative rule that exempts a person from safety belt use requirements must be consistent with the medical exemption permitted in the implementing guidelines for section 406 eligibility. Those guidelines limit the exemption to physicians.

Analysis and supporting documentation used to determine effect on small businesses

This rule making will eliminate one issue of noncompliance specifically identified by NHTSA that makes Wisconsin ineligible for approximately \$15,000,000 in federal safety belt use grant moneys.

Small Business Impact

This rule making has no effect on small businesses.

The Department’s Regulatory Review Coordinator may be contacted by e–mail at ralph.sanders@wisconsin.gov, or by calling (414) 438–4585.

Fiscal Estimate

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

Text of Proposed Rule

SECTION 1. Trans 315.03 (1) (a) and (c) are amended to read:

Trans 315.03 (1) (a) The person has a written statement signed by a licensed physician, ~~chiropractor or a Christian Science practitioner residing in this state and listed in the Christian Science Journal~~ indicating the person cannot be restrained by a safety belt because of a physical or medical condition, or words to that effect.

(c) The statement in par. (a) contains an address and telephone number of the physician, ~~chiropractor, or Christian Science practitioner.~~

Submittal of Proposed Rules to the Legislature

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

Children and Families

Family and Economic Security, Chs. DCF 101–153

CR 09–036

A rule–making order to revise Chapter DCF 150, relating to medical support and child support guidelines review.

Natural Resources

Environmental Protection — General, Chs. NR 100–

CR 05–058

A rule–making order to revise Chapter NR 115, relating to Wisconsin’s Shoreland Management program.

Rule Orders Filed with the Legislative Reference Bureau

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

Insurance **CR 09–027**

Revises section Ins 2.81, relating to use of the 1980 CSO Standard Ordinary Life Valuation Mortality Table in determining the minimum standard of valuation reserves and the minimum standard nonforfeiture values for preneed funeral life insurance products.
Effective 10–1–09.

Labor and Industry Review Commission **CR 09–014**

Revises Chs. LIRC 1 to 4, relating to practice and procedure before the commission.
Effective 10–1–09.

Natural Resources

Environmental Protection — Air Pollution Control, ***Chs. NR 400—*** **CR 07–082**

Revises Chapters NR 404 and 484, relating to ambient air quality standards and affecting small business.
Effective 10–1–09.

Revenue **CR 08–065**

Creates sections Tax 8.03 and 8.05, relating to wine collectors and small winery cooperative wholesalers.
Effective 9–1–09.

University of Wisconsin System **CR 08–099**

Revises Chapters UWS 17 and 18, relating to student nonacademic misconduct, and conduct on land under the control of the Board of Regents.
Effective 9–1–09.

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