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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

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

EmR0904 — Rule adopted creating 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
Hearing Date: September 15, 2009
(See the Notice in this Register)

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

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 Date: April 8, 2009
Extension Through: September 25, 2009

Regulation and Licensing (2)

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

Exemption From Finding of Emergency

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

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

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

Exemption From Finding of Emergency

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

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

Revenue

EmR0912 — Rule adopted revising **Chapter Tax 2**, relating to combined reporting for corporation franchise and income tax purposes.

Finding of Emergency

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

The function of the Wisconsin Department of Revenue is to administer the Wisconsin tax laws. These laws, and tax policy for raising revenue, are determined by the State Legislature. The State Legislature recently enacted numerous items of tax legislation, affecting individuals and businesses alike. Some of these apply retroactively to January 1, 2009. Emergency rules are needed, not only to address the risk of revenue loss, but to add more clarity and certainty about the scope and application of the newly enacted statutes.

Publication Date: August 8, 2009
Effective: August 8, 2009 through January 4, 2010
Hearing Dates: September 25, 2009 and October 16, 2009

(See the Notice in this Register)

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

Scope Statements

Insurance

Subject

Revises section Ins 2.81, relating to use of the 2001 CSO Preferred Class Structure Mortality Table in determining reserve liabilities.

Objective of the rule

The proposed rule would allow life insurers to use the 2001 CSO Preferred Class Structure Mortality Table, which reflects differences in mortality between preferred and standard lives in determining minimum reserve liabilities, for policies written during the period January 1, 2005, to January 1, 2007, in accordance with s. 623.06 (2) (am) 3., Stats., and s. Ins 2.80 (4) (a) and (b), Wis. Adm. Code.

Policy Analysis

The existing requirements are contained primarily in s. 623.06 (2) (am) 3., Stats., s. Ins 2.80 (4) (a) and (b), Wis. Adm. Code, and Subch. V of Ch. Ins 50, Wis. Adm. Code. These provisions establish mortality tables to be used by insurers to calculate minimum reserves and requirements related to testing and reporting of actuarial information. The proposed rule will allow insurers, with the consent of the Commissioner, and meeting prescribed conditions, to use the 2001 CSO Preferred Class Structure Mortality Table as adopted by the National Association of Insurance Commissioners (NAIC) at the September, 2006, national meeting and published in the NAIC Proceedings (Third Quarter 2006), in determining minimum reserves on policies written during the period January 1, 2005, to January 1, 2007. The table will allow insurers to reflect differences in mortality between preferred and standard lives in establishing reserve liabilities to more precisely fit the characteristics of outstanding policies. The proposed rule is under consideration as it is being considered by the NAIC, will increase the ability of insurers and regulators to monitor financial status, and has been adopted or is in the process of being adopted by a significant number of other states.

Statutory Authority

Sections 601.41 (3), 601.42 (3), and ch. 623, Stats.

Comparison with Federal Regulations

The office is unaware of any proposed or existing federal regulation that is intended to address the activities to be regulated by this proposed rule.

Entities Affected by the Rule

The proposed rule will affect insurers which offer life insurance products.

Estimate of Time Needed to Develop the Rule

100 hours and no other resources are necessary.

Insurance

Subject

Revises section Ins 4.10, relating to the Wisconsin Insurance Plan ("WIP").

Objective of the rule

The Office of the Commissioner of Insurance is considering revisions to s. Ins 4.10, Wis. Adm. Code, as proposed by the WIP governing committee. The revisions would provide WIP with the ability to respond in a more timely fashion to changing market conditions.

Policy Analysis

The current rule has many provisions relating to specific procedures that limit WIP's ability to provide Wisconsin insureds with needed coverages and to respond to other market conditions. The revisions being proposed, include but are not limited to, removing underwriting guidelines and procedures from the rule, but requiring that they be filed with and approved by the office prior to being implemented by WIP, changing the number and/or composition of the governing committee and changing the time period for an insured to request a hearing of a decision by the Plan.

Statutory Authority

Sections 601.41 (3) and 619.01 (1), Stats.

Comparison with Federal Regulations

There is no existing or proposed federal regulation that addresses the activities to be regulated by this proposed rule change.

Entities Affected by the Rule

WIP will be affected by this rule.

Estimate of Time Needed to Develop the Rule

100 hours and no other resources are necessary.

Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises section NR 45.04 (1) (g), relating to governing firewood allowed into state lands.

Objective of the rule

The DNR's Division of Forestry recommends amending NR 45.04 (1) (g) to: 1) decrease the distance from which firewood may be brought onto state lands from 50 to 25 miles, 2) allow properties outside areas quarantined for specific firewood transmitted pests and diseases to exclude wood from these areas within the state, 3) include all raw wood in the definition of firewood and 4) allow wood certified by other states if treatment is similar to criteria used by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) in its dealer certification.

Policy Analysis

DNR currently limits wood entering state lands to that wood originating from within 50 miles and within the state or from dealers that are certified by the state as treating their wood to prevent transmission of pests or diseases. A recently completed model suggests, however, that once an invasive is established at several sites within the state, this 50 mile radius may be too large to meaningfully reduce the risk of

introduction of the invasive onto state lands. One of the most damaging invasives moving on firewood, the emerald ash borer (EAB), has been found at three sites in Wisconsin and may be present, undetected, at others. To improve protection for state lands from invasives that move in wood, such as EAB, it is necessary to reduce the distance from which wood is allowed into state lands. We propose the distance for allowable wood be reduced to 25 miles. This distance will increase protection while ensuring adequate firewood supplies for state campgrounds.

In addition to changing the allowable distance for firewood, we will also address three issues that have arisen in the implementation of the rule in the past three years. We propose adding a statement to allow properties in un-quarantined areas to exclude wood from areas within Wisconsin that are quarantined for EAB or other invasives that otherwise would be allowable. We want to clarify the definition of firewood to include all raw wood even if it is not intended for use in a fire, for example, logs used as wheel chocks. Finally, we would like to allow wood certified by other states if the criteria for treatment is similar to those used by the Wisconsin DATCP and at their approval.

Statutory Authority

Section 23.11 (1), Stats.

Comparison with Federal Regulations

The Apostle Islands National Park has prohibited all firewood into the park since 2006. The Chequamegon–Nicolet National Forest prohibits firewood from south of Route 29 or from outside Wisconsin. The Huron–Manistee National Forest in Michigan prohibits bringing ash firewood onto the forest. The Army Corps of Engineers regulates firewood they allow onto their lands in Wisconsin.

Entities Affected by the Rule

We expect campers and firewood dealers would be impacted or interested in this rule.

Estimate of Time Needed to Develop the Rule

Approximately 108 hours will be needed by the Department to develop the rule prior to and following the hearings.

Contact Person

Andrea Diss–Torrance, Gypsy Moth and Invasive Forests Insects Program Coordinator, 101 South Webster Street, PO Box 7921, Madison, WI 53707–7921, (608) 264–9247, Andrea.DissTorrance@wisconsin.gov

Submittal of Rules to Legislative Council Clearinghouse

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

Barbering and Cosmetology Examining Board CR 09–065

On August 17, 2009, the Department of Regulation and Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter BC 9 and creates Chapter BC 11, relating to renewal, reinstatement of license, and continuing education.

Agency Procedure for Promulgation

A public hearing will be held on September 14, 2009.

Contact Information

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Commerce

Financial Resources for Businesses and Communities, Chs. Comm 104— CR 09–063

On August 13, 2009, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter Comm 100, relating to tax benefits for job creation, capital investment, employee training, and corporate headquarters.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 15, 2009. The Division of Business Development is responsible for promulgation of the proposed rules.

Contact Information

Sam Rockweiler
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Financial Institutions — Banking CR 09–060

On August 5, 2009, the Department of Financial Institutions submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters DFI–Bkg 40 to 44, repeals Chapter DFI–Bkg 45, and creates Chapter DFI–Bkg 47, relating to the transition from a registration system to a license system under subch. III of ch. 224, Stats., branch

offices, mortgage broker agreements, surety bonds and trade names.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 14, 2009. The Division of Banking is responsible for promulgation of the proposed rules.

Contact Information

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Phone: (608) 267–1705

Health Services

Community Services, Chs. DHS 30— CR 09–061

On August 12, 2009, the Department of Health Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter DHS 85, relating to corporate guardianships.

Agency Procedure for Promulgation

Public hearings will be held on October 8 and 14, 2009.

Contact Information

For substantive questions on rules contact:

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Small Business Regulatory Review Coordinator:

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Health Services

Health, Chs. DHS 110— CR 09–062

On August 12, 2009, the Department of Health Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter DHS 157, relating to radiation protection.

Wisconsin's Agreement with the Nuclear Regulatory Commission requires the Department to incorporate relevant changes to federal radioactive material regulations into its

radiation protection rules within 3 years of the effective date of the federal regulations. The proposed changes to ch. DHS 157 ensure continued compatibility with new federal radioactive material regulations in 10 CFR Pts. 19, 20, 31, 33–36, 39, 40, 70, 71 and 150 and applicable parts of Title 49 CFR, relating to transportation as required by s. 254.34 (1), Stats.

Agency Procedure for Promulgation

Public hearings will be held on October 13 and 14, 2009.

Contact Information

For substantive questions on rules contact:

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Small Business Regulatory Review Coordinator:

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Revenue CR 09–064

On August 13, 2009, the Department of Revenue submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates sections Tax 2.60 to 2.67, relating to combined reporting for corporation franchise and income tax purposes.

Agency Procedure for Promulgation

A public hearing is required. Two hearings have been scheduled; the first for September 25, 2009, and the second for October 16, 2009. The Office of the Secretary is primarily responsible for promulgation of the proposed rule.

Contact Information

Dale Kleven
Income, Sales and Excise Tax Division
Phone: (608) 266–8253
Email: dale.kleven@revenue.wi.gov

Wisconsin Technical College System Board CR 09–066

On August 14, 2009, the Wisconsin Technical College System Board submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section TCS 10.03 (3), relating to statutory residents.

Agency Procedure for Promulgation

The rule is adopted under s. 227.16 (2) (b), Stats., to bring the current rule into conformity with s. 38.22 (6), Stats. A public hearing is not required.

Contact Information

Morna Foy, Executive Assistant
Phone: (608) 266–2449
Email: morna.foy@wtcsystem.edu

Rule-Making Notices

Notice of Hearing

Barbering and Cosmetology Examining Board

CR 09-065

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Barbering and Cosmetology Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 454.12, Stats., the Barbering and Cosmetology Examining Board will hold a public hearing at the time and place indicated below to consider an order to renumber and amend section BC 9.02; to repeal and recreate section BC 9.01; and to create section BC 9.02 and Chapter BC 11, relating to renewal, reinstatement of license, and continuing education.

Hearing Information

Date: September 14, 2009
Time: 9:45 a.m.
Location: 1400 East Washington Avenue
Room 121A
Madison, Wisconsin

Appearances at the Hearing and Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Pamela Haack, Department of Regulation and Licensing, Division of Board Services, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by September 25, 2009, to be included in the record of rule-making proceedings.

Copies of Proposed Rule

Copies of this proposed rule are available upon request to Pamela Haack, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at pamela.haack@wisconsin.gov.

Analysis Prepared by the Department of Regulation and Licensing

Statutes interpreted

Section 454.12, Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 454.12, Stats.

Explanation of agency authority

The Barbering and Cosmetology Examining Board is granted the authority under s. 454.12, Stats., to promulgate rules that establish continuing education requirements for licensure.

Plain language analysis

This proposed rule-making creates continuing education requirements for licensure. It also creates criteria for the approval of continuing education programs and the types of programs required to be taken for license renewal.

SECTION 1 repeals and recreates a provision that sets out the requirements for license renewal. There is no equivalent provision in the current rule. The requirements for renewal of a license are that the applicant must complete a form prescribed by the department, submit a fee determined by the department, and have fulfilled the continuing education requirements within the biennial period immediately preceding application.

SECTION 2 renumbers and amends a provision that allows the board to require an applicant for reinstatement of their license to take an examination. An applicant for reinstatement is someone whose license has been expired for 5 or more years. The amendment clarifies that the examination the applicant has to pass is the state board examination.

SECTION 3 creates a provision relating to late license renewals and makes it consistent with current statutory language regarding how initial and renewal license fees are determined.

SECTION 4 creates ch. BC 11 that establishes continuing education requirements for license renewal and criteria for the approval of continuing education courses. There are currently no requirements for continuing education for any licensee under the Barbering and Cosmetology Examining Board.

Chapter BC 11 creates a requirement that applicants for renewal licenses must have obtained 12 credits of continuing education during the 2-year period immediately preceding the license renewal date. A licensee must obtain the following types and number of credit hours: 2 credit hours reviewing the laws governing their profession; 4 credit hours in safety, sanitation and infection control; and 6 credit hours directly related to the provision of services allowed under the applicant's license. One hour of instruction equals one continuing education credit hour. One hour of teaching equals one continuing education credit hour and a maximum of 4 credit hours may be obtained by teaching in a biennium. Applicants are exempt from the continuing education requirement for their first license renewal. Licensees who have held an active Wisconsin license for 30 or more years are only required to obtain 6 credit hours within a biennium. They must obtain 2 credit hours in reviewing the laws governing their profession and 4 credit hours in safety, sanitation and infection control.

Chapter BC 11 also provides that if a licensee fails to complete the continuing education requirement prior to renewal, the first credit hours obtained after the renewal date will be applied to the preceding biennium. Those credit hours may not be counted in any other biennium.

Each licensee is required to obtain a certificate of completion from the program provider for each continuing education course completed. The licensee must keep the certificates for 5 years and provide a copy of them to the department for auditing of compliance.

Chapter BC 11 also gives the board the ability to grant a waiver, partial waiver or postponement of the continuing education requirement in cases of hardship.

The rule specifies that the following are approved as continuing education programs: programs provided by a state licensed school, workshops presented by a state or national professional organization, and programs presented by a state

licensed instructor. In addition, the board may approve other programs that offer significant professional educational benefits for licensees that are presented by a university, technical college, or product distribution company.

Licensees will be required to have 6 continuing education credit hours to renew licenses at the March 1, 2011 renewal date. Two of those shall be in law and 4 in safety, sanitation and infection control. Licensees will be required to have 12 continuing education credit hours to renew licenses at the March 13, 2013 renewal date.

Comparison with federal regulations

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states

Illinois

Continuing education requirements are as follows: Ten hours are required for estheticians, 14 hours for cosmetologists, and 10 hours for nail technicians for each biennial renewal. There are no requirements for barbers.

Iowa

Continuing education requirements are 8 hours each for barbers, cosmetologists, nail technicians, and estheticians. www.idph.state.ia.us

Michigan

There are no continuing education requirements for barbering or cosmetology. www.michigan.gov/dleg

Minnesota

Cosmetologists, manicurists, and estheticians must provide documentation that they have practiced for a certain amount of hours in the previous 3 year period or have taken an approved 40 hour refresher course. This requirement does not exist for barbers. These professions do not have continuing education requirements. www.bceboard.state.mn.us

Summary of factual data and analytical methodologies

The comparison information with the rules in adjacent states was obtained directly from contact with those states and a review of their rules. The comparison to the adjacent states demonstrates that the proposed rules are substantially consistent with the rules in those states. In addition, the Barbering and Cosmetology Examining Board examined models of continuing education from national organizations related to their profession, as well as from other Wisconsin regulatory boards.

Analysis and supporting documents used to determine effect on small business

Internet research, as well as telephone surveys were conducted regarding the availability and costs related to continuing education in the cosmetology profession. Continuing education credits are available at an average cost range of \$10–\$25 per credit hour, and are available in a wide array of modes (online, video correspondence, workshops, etc.). That data was compared with the requirements outlined in the proposed rules and based thereon, appears that while individual licensees will see a slight increase in the cost associated with doing business as a result of these rules, the rules will have no significant impact on a substantial number of small businesses.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The

Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by private sector

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

Small Business Impact

These proposed rules were reviewed by the department’s Small Business Review Advisory Committee who determined that the rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

The Department’s Regulatory Review Coordinator may be contacted by email at hector.colon@wisconsin.gov, or by calling (608) 266–8608.

Fiscal Estimate

The department estimates that this rule will require staff time in the Division of Enforcement, Division of Management Services, and the Office of Exams. The total one-time salary and fringe costs are estimated at \$26,172. The total on-going salary and fringe costs are estimated at \$40,228.

Agency Contact Person

Pamela Haack, Paralegal
Department of Regulation and Licensing
Division of Board Services
1400 East Washington Avenue
Room 152
P.O. Box 8935
Madison, Wisconsin 53708
telephone : (608) 266–0495
email at: pamela.haack@wisconsin.gov

Notice of Hearing Commerce

Financial Resources for Businesses and Communities, Chs. Comm 104— EmR0910 and CR 09–063

NOTICE IS HEREBY GIVEN that pursuant to sections 560.70 (2m) (b) and 560.706 (2) of the Statutes, the Department of Commerce will hold a public hearing on emergency rules and proposed permanent rules under Chapter Comm 100, relating to tax benefits for job creation, capital investment, employee training, and corporate headquarters, and affecting small businesses.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
September 15, 2009 Tuesday at 10:00 a.m.	Thompson Commerce Center Third Floor, Room 3B 201 West Washington Avenue Madison, Wisconsin

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 or at Contact Through Relay at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the emergency rules and proposed permanent rules. Persons making oral presentations are requested to submit their comments in writing, via e-mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until September 22, 2009, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E-mail comments should be sent to sam.rockweiler@wi.gov. If e-mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

Copies of Emergency Rules and Proposed Rules

The emergency rules and proposed permanent rules and an analysis of the rules are available on the Internet by entering "Comm 100" in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at sam.rockweiler@wi.gov, or at telephone (608) 266-0797, or at Contact Through Relay. Copies will also be available at the public hearing.

Analysis Prepared by Department of Commerce

Statutes interpreted

Sections 560.70 (2m) (b) and 560.701 to 560.706, Stats., as created by 2009 Wisconsin Act 2.

Statutory authority

Sections 227.11 (2) (a), 560.70 (2m) (b) and 560.706 (2), Stats.

Explanation of agency authority

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.70 (2m) (b) authorizes the Department to promulgate rules specifying circumstances where a full-time job may consist of fewer than 2,080 hours per year. Section 560.706 (2) requires the Department to promulgate rules for implementing sections 560.701 to 560.706 of the Statutes, as created by 2009 Act 2, relating to tax incentives for job creation, capital investment, employee training, and corporate headquarters.

Related statute or rule

Several statutes and other Departmental rules address tax incentives for business development in Wisconsin. For example, sections 560.70 to 560.7995 of the Statutes and chapters Comm 107, 112 and 118 address tax-benefit programs for community development zones, development opportunity zones, enterprise development zones, agricultural development zones, enterprise development zones, technology zones and airport development zones. The changes to chapter 560 of the Statutes that were included in 2009 Wisconsin Act 2 and the rules which are the subject of this order will consolidate five of the Department's development-zone tax-credit programs into a single, statewide program.

Plain language analysis

The rules in this order (1) specify hourly wage ranges and health insurance benefits, and corresponding tax credits for

businesses that create full-time jobs having those wages and benefits; (2) define which capital investments are significant, and specify tax credits that may be allocated to those investments; (3) define which employee training is eligible for tax credits, and specify tax credits that may be allocated to that training; (4) define which business offices are corporate headquarters, and specify tax credits that may be allocated to those offices; (5) establish a methodology for designating economically distressed areas; (6) specify additional tax benefits for businesses in economically distressed areas and benefiting members of targeted groups; (7) establish policies, criteria and methodology for reserving a portion of available tax benefits to rural areas; (8) establish policies, criteria and methodology for reserving a portion of available tax benefits to small businesses; (9) establish policies and criteria for certifying a business that may be eligible for tax benefits equal to or greater than \$3 million; (10) establish policies and criteria for allocating tax credits beyond the general limits that are otherwise specified; (11) establish a minimum time period for maintaining positions that are created, retained or trained as a result of the tax credits addressed by these rules; and (12) establish the application, certification, verification, reporting, filing and contract procedures for the tax credits addressed by these rules.

Comparison with federal regulations

In researching federal tax incentives, the Department and the Department of Revenue found that there are no tax credits at the federal level which are exactly like the corresponding credits in 2009 Wisconsin Act 2. The following two federal tax credits may apply to the activities under section 560.702 of the Statutes which are addressed by the rules, but these federal tax credits are structured differently than the credits in Act 2.

Job creation that is eligible for tax benefits under section 560.702 (1) of the Statutes may also qualify for the federal consolidated Work Opportunity Tax Credit – which includes tax credits for an employer that hires an individual who is: (1) a qualifying Hurricane Katrina employee, (2) a member of a qualifying family with long-term or recent receipt of Temporary Assistance to Needy Families payments, (3) a qualifying food stamp recipient, (4) a qualifying veteran, (5) a qualifying ex-felon, (6) a resident of a designated community, (7) a qualifying summer youth employee, (8) a qualifying recipient of vocational rehabilitative services, or (9) a qualifying recipient of Supplemental Security income.

Capital investments that are eligible for tax benefits under section 560.702 (2) of the Statutes may also qualify for the federal Investment Credit – which includes tax credits for any qualifying rehabilitation of older structures, solar or geothermal energy equipment, advanced coal projects, and gasification projects.

Comparison with rules in adjacent states

Michigan

Michigan has several tax credit and tax abatement programs targeting specific business activities – development, manufacture and commercialization of advanced batteries; brownfield clean-up; manufacturers seeking defense contracts; promotion of renewable energy operations; tool and die operations; agricultural processing facilities; and forest products processing facilities. None are comparable to the new tax credit program addressed by the rules in this order.

The Michigan Economic Growth Authority Job Creation Tax Credits and Job Retention Tax Credits may be awarded for up to 20 years and up to 100 percent of an amount equal

to the salaries and wages and employer–paid health care benefits multiplied by the personal income tax rate.

Minnesota

Minnesota’s Job Opportunity Building Zone program offers a variety of tax exemptions and tax credits to businesses beginning operations in a designated zone, expanding in a zone, relocating to a zone from another state or relocating to a zone from another Minnesota location if employment is increased by five jobs or 20 percent, whichever is greater, within the first full year of operation in the zone. Businesses may qualify for exemptions to corporate franchise taxes, and income taxes for operators or investors, including capital gains taxes; sales taxes on goods and services used in the zone; property taxes on commercial and industrial improvements; and wind energy production taxes. The program also includes a refundable job credit that is calculated in much the same manner as Wisconsin’s Enterprise Zone job credit.

Iowa

Iowa’s Enterprise Zone program offers businesses a local property tax exemption of up to 100 percent of the value added to the property for up to 10 years; a refund of state sales, service or use taxes paid to contractors during construction; and an investment credit of up to 10 percent of the qualifying investment, amortized over 5 years.

Iowa’s High Quality Job Creation program offers businesses various combinations of the following: a local property tax exemption of up to 100 percent of the value added to the property for up to 20 years; a refund of state sales, service or use taxes paid to contractors during construction; and an investment credit equal to a percentage of the qualifying investment, amortized over 5 years.

Illinois

The Illinois Economic Development for a Growing Economy (EDGE) program offers tax credits as high as the amount of tax receipts collected from state income taxes paid by newly–hired or retained employees as pertaining to the project. Each project must add to the export potential of Illinois, involve capital investment of at least \$5 million and create at least 25 new jobs, or meet requirements set forth by the Illinois Department of Commerce and Economic Opportunity. EDGE credits are available for up to 10 years for each project. Jobs and capital investments must be maintained for the period in which the credits are claimed.

In addition to a variety of tax exemptions, the Illinois Enterprise Zone program offers an investment credit of 0.5 percent and a jobs credit of \$500 per eligible employee hired to work in a zone during a taxable year. Eligible employees are individuals who are certified as economically disadvantaged or as dislocated workers.

Summary of factual data and analytical methodologies

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the criteria in 2009 Wisconsin Act 2; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax–credit verification; (3) soliciting and utilizing input from the Department of Revenue and from the Wisconsin Economic Development Association; and (4) reviewing Internet–based sources of related federal, state, and private–sector information.

Analysis and supporting documents used to determine effect on small business

The primary document that was used to determine the effect of the rules on small business was 2009 Wis. Act 2. This Act consolidates five of the Department’s development–zone tax–credit programs into a single, statewide program. The Act applies its private–sector requirements only to businesses for which a corresponding tax credit is desired.

Small Business Impact

The rules are not expected to impose significant costs or other adverse impacts on small businesses because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax credits for job creation, capital investment, employee training and corporate headquarters.

Initial regulatory flexibility analysis

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

Businesses and individuals that choose to pursue tax benefits for job creation, capital investment, employee training, and corporate headquarters, as established under sections 560.701 to 560.706 of the Statutes.

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

A business certified under the rules must enter into a written agreement with the Department that establishes the responsibilities which the business will fulfill with regard to the Department’s terms and conditions in allocating a tax credit.

Types of professional skills necessary for compliance with the rules.

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

Rules have a significant economic impact on small businesses?

No.

Small business regulatory coordinator

Any inquiries for the Small Business Regulatory Coordinator for the Department of Commerce can be directed to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at sam.rockweiler@wi.gov, or telephone (608) 266–0797.

Environmental Impact

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

Fiscal Estimate

Assumptions used in arriving at fiscal estimate

Although the rules will newly result in review of documentation relating to certifying applicants as eligible to

then claim allocated tax credits for job creation, capital investment, employee training, and corporate headquarters, the number of these reviews and allocations is expected to be about the same as in the five development-zone programs that are being replaced by this program. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

The proposed rules are not expected to impose any significant costs on the private sector because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax credits for job creation, capital investment, employee training and corporate headquarters.

State fiscal effect

None.

Local government fiscal effect

None.

Long-range fiscal implications

None known.

Agency Contact Person

Todd Jensen, Wisconsin Department of Commerce, Bureau of Business Finance, 201 West Washington Avenue, Madison, WI, 53703; telephone: (608) 266-3074; E-Mail: Todd.Jensen@commerce.state.wi.us.

Notice of Hearing

Financial Institutions — Banking

CR 09-060

NOTICE IS HEREBY GIVEN That pursuant to ss. 224.72 (7) (bm) and (8), 224.725 (4) (c), (5) (b) and (8), 224.73 (3) (a), and 227.11 (2), Stats., the Department of Financial Institutions, Division of Banking will hold a public hearing to consider a rule to repeal and recreate Chapters DFI-Bkg 40, 41, 42 and 43; amend s. DFI-Bkg 44.01 (1) (f); create s. DFI-Bkg 44.01 (1) (g); repeal Chapter DFI-Bkg 45; and create Chapter DFI-Bkg 47, relating to the transition from a registration system to a license system under subch. III of ch. 224, Stats., branch offices, mortgage broker agreements, surety bonds and trade names.

Hearing Information

The public hearing will be held at:

September 14, 2009 at 1:00 pm.

Department of Financial Institutions
345 W. Washington Avenue
5th floor
Madison, Wisconsin

Copies of Proposed Rule, Submission of Written Comments and Contact Persons

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 rule, contact Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707-7876, tel. (608) 266-0451.

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

Statute(s) interpreted

Sections 224.72 (7) (bm) and (8), 224.725 (4) (c), (5) (b) and (8), and 224.73 (3) (a), Stats.

Statutory authority

Sections 224.72 (7) (bm) and (8), 224.725 (4) (c), (5) (b) and (8), 224.73 (3) (a), and 227.11 (2), Stats.

Related statute or rule

None.

Explanation of agency authority

Pursuant to s. 220.02 (2) and (3), and subch. III of ch. 224, Stats., the division regulates mortgage banking.

Summary of proposed rule

The objective of the rule is to repeal and recreate chs. DFI-Bkg 40, 41, 42 and 43; amend s. DFI-Bkg 44.01; repeal ch. DFI-Bkg 45; and create ch. DFI-Bkg 47. The purpose of this rule is to bring these chapters into conformity with subch. III, ch. 224, Stats., as mandated and affected by 2009 Wisconsin Act 2 and the Secure and Fair Enforcement for Mortgage Licensing ("S.A.F.E.") Act of 2008 regarding the transition from a registration system to a license system for mortgage bankers, mortgage brokers and mortgage loan originators. Primarily affected are provisions regarding terminology, and licensing requirements and procedures. Because of the numerous changes to terminology and deletion of text, the division proposes to repeal and recreate most of these chapters rather than extensively amend and renumber; otherwise the substance of the text remains largely the same. The purpose of the rule is also to provide clarification regarding branch offices, mortgage broker agreements, surety bonds and trade names.

Comparison with federal regulations

The requirements of 2009 Wisconsin Act 2 stem from the Secure and Fair Enforcement for Mortgage Licensing ("S.A.F.E.") Act of 2008.

Comparison with rules in adjacent states

Illinois, Iowa and Michigan have all adopted or are in the process of adopting the S.A.F.E Act of 2008; Minnesota is not adopting this act.

Summary of factual data and analytical methodologies

The changes are largely ones of terminology and procedure that stem directly from the S.A.F.E. Act of 2008 and 2009 Wisconsin Act 2. The division applied its own experience in its regulation of mortgage bankers and mortgage brokers regarding the clarifications on branch offices, surety bonds and trade names.

Small Business Impact

The rule reflects changes imposed congressionally by the S.A.F.E. Act of 2008 and legislatively by 2009 Wisconsin Act 2, and not by the department. Clarifications to matters regarding branch offices, mortgage loan agreements, surety bonds and trade names are already existing obligations for mortgage bankers and mortgage brokers. The rule itself therefore imposes no substantial impact on small businesses.

Fiscal Estimate

The state fiscal effect is an expected increase in costs which may be possible to absorb within the agency's budget; there are no local government costs.

Notice of Hearings

Health Services

Community Services, Chs. DHS 30—

CR 09–061

NOTICE IS HEREBY GIVEN that pursuant to ss. 54.15 (7) and 227.11 (2) (a), Stats., the Department of Health Services will hold public hearings to consider the repeal and recreation of Chapter DHS 85, relating to non-profit corporations and unincorporated associations as guardians, and affecting small businesses.

Hearing Information

Date and Time	Location
October 8, 2009 1:00 PM to 3:00 PM	Waukesha State Office Bldg. 141 N. W. Barstow Street Room 151 Waukesha, WI
October 14, 2009 11:00 AM to 1:00 PM	La Crosse Public Library 800 Main Street Main Auditorium La Crosse, WI

Accessibility

English

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting Pat Benesh at (608) 264–9896. You must make your request at least 7 days before the activity.

Spanish

DHS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con Pat Benesh al número at (608) 264–9896. Debe someter su petición por lo menos 7 días de antes de la actividad.

Hmong

DHS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau Pat Benesh ntawm at (608) 264–9896. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnub ua ntej qhov hauj lwm ntawd.

Agency Contact Person

Pat Benesh, Quality Assurance Program Spec–Senior
Division of Quality Assurance
1 West Wilson St., Room 1150
Madison, WI 53701
Phone: 608–264–9896
Fax: 608–267–7119
patricia.benesh@wisconsin.gov

Submission of Written Comments

Comments may be submitted to the agency contact person that is listed above. The deadline for submitting comments is October 21, 2009.

Analysis Prepared by the Department of Health Services

Statute interpreted

Section 55.02, Stats.

Statutory authority

Sections 54.15 (7) and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 54.15 (7), Stats., provides the Department with the authority to promulgate rules to specify standards for approval of non-profit corporate guardians or unincorporated associations as guardians of a person or an estate, or both.

Related statute or rule

Chs. 54 and 55, Stats.

Plain language analysis

Chapter DHS 85 establishes standards for the approval of non-profit corporate guardians or unincorporated associations as guardians of a person or an estate.

In this order, the Department proposes to repeal and recreate ch. DHS 85 as follows:

1. To update the rules to reflect current standards of practice of corporate guardianships in the areas of staff qualifications and training, caregiver background checks, duties and powers of the guardian, adequacy of staff, rights of wards, contacts with wards, wards records, and conflict of interest standards.

2. Require corporate guardians to maintain policies in the areas of abuse and neglect misappropriation of property, grievance procedure for use by wards and interested parties, and complaint and grievance investigation.

3. Reflect the increasing number of adults in need of guardianship and increase in their acuity level.

4. Incorporate provisions limiting the number of wards a corporate guardian may have.

5. Establish standards for approval, changing ownership and closing a corporate guardianship agency and to determine whether a person is fit and qualified to operate as a corporate guardian.

Comparison with federal regulations

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

Comparison with rules in adjacent states

Illinois

There are no administrative codes governing guardianship services in Illinois.

Iowa

In Iowa, counties provide guardianship services for individuals who do not have a suitable family member or interested person who will act as guardian. The rules governing guardianship are found in probate laws and include general provisions concerning the determination of incompetency of the proposed ward, the petition of appointment of guardian, the notice to the proposed ward and representation of the ward at the hearing. In addition, the rules

provide for the notification of guardianship powers including providing for the care of the ward, managing the ward's personal property, assisting the ward in developing self-reliance and receiving professional care, counseling, treatment or services as needed and ensuring that the ward receives necessary emergency medical services. The rule also provides for the appointment of a conservator, temporary conservator, standby conservator and liability of conservators.

Iowa code, 633.551 to 633.701 contains rules governing the provision of guardianships and conservatorships.

Michigan

Michigan has established administrative rule governing the provision of public guardianship services for persons with mental retardation. The rule establishes standards for the determination of the need for guardianship, standards for informed consent and the admission procedures into a facility. The rule provides for emergency guardianship, the circumstances the provision may be applied and the powers of the emergency guardian. The rule also includes standards for a facility or program in guardianship proceeding, guardianship for minors and termination or modification of guardianship orders.

Administrative Code Section: Mich. Adm. Code R. 330.6006 to 330.6031 contains rules governing the provision of guardianship to persons who are designated mentally retarded.

Minnesota

Minnesota has established administrative rule governing the provision of public guardianship services for a person with mental retardation. The rule establishes standards related to the process used to appoint a public guardian, the limitations of the guardian's powers and duties and standards for consent determinations. The duties of the public guardian are outlined in rule and include determining the ward's place of residence consistent with the ward's best interests, making provisions for the ward's care, comfort, medical, social and recreational needs, taking reasonable care of the ward's property and approving or withholding approval of any contract the ward makes. Special duties of the guardian such as visiting the ward at least twice a year, taking action and making decisions encouraging the least restrictive effect on the ward's personal freedom and encouraging maximum self-reliance on the part of the ward are also included in the rule. The rule provides standards related to non-delegated consent, non-delegated consent requiring a court order and the process for modification or termination of public guardianship. No administrative rule could be found for guardians for persons who are not mentally retarded.

Administrative Code Section: Minn. R. 9525.3010 to 9525.3100.

Summary of factual data and analytical methodologies

The Department relied on all of the following sources to draft the proposed rule and to determine the impact on small businesses.

- The Department formed an advisory committee consisting of representatives from the Disability Rights Wisconsin, Inc., the Wisconsin Guardianship Association, the Coalition of Wisconsin Aging Groups, the Board on Aging and Long Term Care, County Adult Protective Services staff including County Departments of Social Services, Human Services, Community Programs, County Registers in Probate and Department staff. The advisory committee reviewed the initial draft of

the rule and provided comments. The rule was revised based upon the comments made by the advisory committee.

- The Department held four listening sessions with wards in Eau Claire, Fort Atkinson, Green Bay and Milwaukee to gain their perspective on corporate guardianship services. The information obtained from wards was shared with the advisory committee for comment. The views of wards were given the same consideration as the views expressed by other members of the Advisory Committee when drafting rule language. For example, comments from wards related to frequency and location of visits with their guardian, notification of rights and grievance procedure, involvement of wards in decision making and other areas in which wards expressed comment, are reflected in the proposed rules.
- The 2002 Economic Census – Wisconsin Geographic Series, compiled by the U.S. Census Bureau every 5 years for each year ending in “2” or “7” contains the latest available economic data compiled from businesses located in Wisconsin.
- Criteria adopted by the Department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department's proposed rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department's criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index or revenues are reduced by more than the prior year's consumer price index. For the purposes of the rulemaking, 2007 is the index year. The consumer price index is compiled by the U. S. Department of Labor, Bureau of Labor Statistics and for 2007 is 4.2 percent.
- Section 227.114 (1) (a), Stats., defines “small business” as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has a gross annual sales of less than \$5,000,000.
- The DHS database that contains demographic, program and approval information for non-profit corporate guardians.

Analysis and supporting documents used to determine effect on small business

The North American Industry Classification System (NAICS) includes Corporate Guardianships in the Professional, Scientific, and Technical Services sector (sector 54) and further defined in sub-sector 54119 Other Legal Services. This industry comprises establishments of legal practitioners (except lawyers and attorneys) primarily engaged in providing specialized legal or paralegal services. The 2002 census lists 216 entities with total revenue over \$25 million. Corporate guardians are a small portion of this sub-sector.

In November 2006, the Division of Quality Assurance (DQA) conducted a survey of the 72 corporate guardianship agencies operating in Wisconsin at that time. Partnering with the Wisconsin Guardianship Association, Coalition of Wisconsin Aging Groups and Disability Rights Wisconsin, Inc., DQA developed a survey that focused on key sections of the rule that had been identified for possible revision. The survey asked questions about the number and type of wards served, services provided, agency staffing, contact with wards, staff training, criminal background checks conducted

by the agency and the operational structure. Over 50 percent of the agencies responded to the survey.

Data from DHS datasets lists 72 corporate guardians in Wisconsin.

Available data implies that most corporate guardians should be considered small business as defined in Section 227.114 (1) (a), Stats. Guardianships must be chartered as a non-profit entity authorized to conduct business in Wisconsin. DHS conducted a survey of corporate guardians with more than 50 percent of the agencies responding. DHS approves the number of wards that an agency can serve. The results of the survey reveal that 80 percent of agencies serve less than 100 wards.

Number of Wards Served	Percent of Agencies
20 Wards or less	52.00%
21 – 99 Wards	30.00%
100 or more Wards	18.00%

Financial data for corporate guardianships is not readily available. Based on an agency with 100 wards and 6 guardian representatives the following potential increased costs from DHS 85 were identified:

- The proposed rule requires agencies to conduct criminal background checks for all employees who have contact with wards. The cost for the background check and staff time to complete the review is estimated at \$22.00 per review. For an agency with 6 guardian representatives the cost will be \$132.00 every 4 years (6 x \$22) or \$33.00 annually. The proposed rule requires background checks on paid staff only, volunteers are exempt. Based on DQA survey results, over half of the responding agencies indicated that background checks are already being performed on paid staff. Some agencies also complete criminal background checks on their volunteers.
- The proposed rule will require that each new guardian representative receive initial training regarding their job responsibilities including information about the needs and services for wards they are assigned to, information about local resources to meet the needs of wards, prevention and reporting of abuse, neglect and misappropriation of property, ward’s rights and the agency’s policies and procedures including their grievance procedure. The rule does not require a specific number of hours for this training, however, initial training is estimated to require up to 40 hours. The cost of training is estimated at \$28.00 per hour totaling \$1,200 for each new guardian representative (40x\$28). It is estimated that one new guardian representative will need this training at an average agency each year.
- The proposed rule will require that each guardian representative complete 20 hours of continuing education training every 24 calendar months. Costs for training are estimated on 10 hours of continuing education training provided each year for 6 guardian representatives. Continuing education training is estimated to cost \$56.00 per hour each for 6 guardian representatives totaling \$3,360.00 (60x\$56) annually. A large number of guardian representatives hold assorted credentials (social workers, attorneys, etc.) and are required by their licensure status to accrue a number of continuing education credits annually. These continuing education credits may be used to meet the requirement for continuing education in the

proposed rule. Based on DQA survey results, many agencies already provide between 17–20 hours of training annually, exceeding the proposed rule.

- The proposed rule will require agencies to have a photograph of each ward in its file. It is estimated that this requirement will cost \$3.00 per ward. Options include a digital camera at \$100.00, a disposable camera and 24 prints at \$15.00, or individual passport photos at \$3.00 per photo.

The Wisconsin Guardianship Association (WGA) is planning to offer training and workshops to all nonprofit corporate guardian agencies on meeting the new standards in the proposed rule. This training will include sample policies and procedures that agencies may choose to use and adapt to meet their agency’s program. The WGA will also sponsor regular training/educational conferences for guardian representatives to meet the continuing education training requirement.

Many corporate guardians charge fees to wards or to counties for services provided. As costs for providing these services increase, including additional costs from revisions in DHS 85, fees may also be adjusted. It is unknown if the costs identified above will exceed the current consumer price index of 4.2 percent for any given agency, no single requirement appears to exceed this criteria. The fiscal impact of these additional requirements does not appear to be significant and will vary directly with the size of the agency. Agencies have the ability to increase fees charged to the wards or via the county court system; the overall effect of these proposed increases on corporate guardian agencies should be minimal.

Small Business Impact

Data from DHS data sets list 72 Corporate Guardianships in Wisconsin at this time. These entities must be “Nonprofit Corporations” as defined in s. 181.0103 (17) Stats., namely a corporation, no part of the income which is distributed to its members, officers, or directors. The Department of Financial Institutions also requires Corporate Guardianships to be Non-stock corporations. The fiscal impact of the requirements noted above does not appear to be significant and will vary directly with the size of the agency. Agencies have the ability to increase fees charged to their wards or via the county court system; the overall effect of these proposed increases on corporate guardian agencies should be minimal. It is unknown if the costs identified above will exceed the current consumer price index of 4.2 percent for any given agency, no single requirement appears to exceed this criteria.

Small Business Regulatory Coordinator

Rosie Greer
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608-266-1279

Fiscal Estimate

Summary

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State fiscal effect

None.

Local government fiscal effect

Indeterminate. Increase costs.

Local government units affected

Counties.

Private sector fiscal effect

Indeterminate. Increase revenues and Increase costs. Costs will not have significant economic impact on a substantial number of small businesses.

Long-range fiscal implications

None anticipated.

Text of Proposed Rule

SECTION 1. Chapter DHS 85 is repealed and recreated to read:

Chapter DHS 85

Private Non-profit Corporations and Unincorporated Associations as Guardians

Subchapter I — General Provisions

DHS 85.01 Purpose and authority. This chapter is promulgated under the authority of s. 54.15 (7), Stats., and ch. 227.11 (2) (a), Stats., to establish the criteria by which the department determines whether a private nonprofit corporation organized under ch. 181, 187, or 188, Stats., or an unincorporated association is suitable to perform the duties of a guardian of the person, or of the estate, or both, of a proposed ward.

DHS 85.02 Applicability. This rule applies to private non-profit corporations or unincorporated associations applying to the department for consideration of suitability to perform the duties of guardian of a person or of an estate, or both, of a proposed ward.

DHS 85.03 Definitions. As used in this chapter:

(1) "Applicant" means a private nonprofit corporation or an unincorporated association that applies to the department for a finding of suitability to perform the duties of a corporate guardian.

(2) "Corporate guardian" or "guardian" means a private nonprofit corporation or an unincorporated association appointed by a court to serve as guardian of the person, or of the estate, or both, of an individual who is found by a court to be in need of a guardian.

(3) "Department" means the Wisconsin department of health services.

(4) "Guardian of the estate" has the meaning given under s. 54.01 (11), Stats.,

(5) "Guardian of the person" has the meaning given under s. 54.01 (12), Stats.

(6) “Guardianship program” means a system that is established by a corporate guardian to manage the income and assets and provide for the essential requirements for health and safety and the personal needs of its wards under ch. 54, Stats.

(7) “Guardianship program manager” means an employee designated by a corporate guardian, who is responsible for the management and day-to-day operation of the guardianship program.

(8) “Guardian representative” means an individual assigned by a guardian to perform the functions of the guardian of the person under s. 54.25 (1) and (2), Stats., or of the estate under s. 54.19 and 54.20, Stats., or both, of a ward.

(9) “Successor guardian” has the meaning given in s. 54.01 (35), Stats.

(10) “Unincorporated association” is an organization organized under ch. 184, Stats.

(11) “Ward” has the meaning given under s. 54.01(37), Stats.

DHS 85.04 Waivers and variances. (1) DEFINITIONS. In this section:

(a) “Variance” means the granting of an alternate requirement in place of a requirement of this chapter.

(b) “Waiver” means the granting of an exemption from a requirement of this chapter.

(2) REQUIREMENTS FOR WAIVERS AND VARIANCES. The department may grant a waiver or variance of a requirement of this chapter to the corporate guardian if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any ward and that:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the ward.

(b) An alternative to a requirement, including a new concept, method, procedure or technique, other equipment, other personnel qualifications, or the conducting of a pilot project, is in the interests of better care or management.

(3) APPLYING FOR A WAIVER OR VARIANCE. A corporate guardian may apply for a waiver or variance at any time. Each request shall be made in writing to the department and include all of the following:

(a) The rule provision from which the waiver or variance is requested.

(b) The time period for which the waiver or variance is requested.

(c) If the request is for a variance, the specific proposed alternative action.

(d) The reasons for the request.

(e) Justification that a requirement under sub. (2) would be satisfied.

(f) Any other information requested by the department.

(4) DEPARTMENT DECISION. (a) The department shall grant or deny each request for waiver or variance in writing. A notice of denial shall contain the reasons for denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved.

(b) The terms of a requested variance may be modified upon agreement between the department and the corporate guardian.

(c) The department may impose conditions on the waiver or variance which it deems necessary.

(d) The department may limit the duration of a waiver or variance.

(5) HEARINGS. (a) Denial of a request for a waiver or variance may be contested by requesting a hearing as provided by ch. 227, Stats.

(b) The licensee shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

(6) REVOCATION. The department may revoke a waiver or variance for any of the following reasons:

(a) The department determines that the waiver or variance is adversely affecting the health, safety or welfare of the wards.

(b) The guardian has failed to comply with the waiver or variance as granted.

(c) The licensee notifies the department in writing of the desire to relinquish the waiver or variance and be subject to the requirement previously waived or varied.

(d) Revocation is required by a change in law.

Subchapter II — Approvals

DHS 85.05 Application. (1) APPLICATION. Only a private nonprofit corporation or an unincorporated association may apply to the department for a determination that the corporation or association is suitable to perform the duties of a guardian. A corporation or association applying for such a determination shall apply to the department on an application form provided by the department. The applicant shall submit the completed application and all of the following to the department:

(a) The filed endorsement of the Articles of Incorporation submitted to the Wisconsin department of financial institutions, if applicable.

(b) A copy of the applicant’s written grievance procedure for use by wards and interested parties.

(c) A business plan that includes staffing projections.

(d) Any additional information requested by the department.

Note: Copies of the application form can be obtained at <http://dfhs.wisconsin.gov/rlDSL/corptguardn> or by contacting the Division of Quality Assurance at P. O. Box 2969, Madison WI 53701–2969.

DHS 85.06 Criteria for approval. The department may not approve an applicant until the department determines the applicant is fit and qualified to receive a determination of suitability to perform the duties of a corporate guardian. In determining whether an applicant is fit and qualified, the department may consider all of the following:

(1) Compliance history with Wisconsin’s or any other state’s licensing requirements and with any federal certification requirements, including any license revocation or denial.

(2) Arrest history and criminal record, including any of the following:

(a) Crimes or acts involving abuse, neglect or mistreatment of a person or misappropriation of property of the person.

(b) Crimes or acts related to the manufacture, distribution, prescription, use, or dispensing of a controlled substance.

(c) Fraud or substantial or repeated violations of applicable laws and rules in the operation of any health care facility or in the care of dependent persons.

(d) A conviction or pending criminal charge which substantially relates to the care of adults or minors, to the funds or property of adults or minors, or to the operation of a residential or health care facility or agency.

(3) Financial stability, including all of the following:

(a) Financial history and financial viability of the owner or related organization.

(b) Outstanding debts or amounts due to the department or other government agencies, including unpaid forfeitures and fines.

DHS 85.07 Change of ownership. (1) If a corporate guardian sells or otherwise transfers ownership of the corporation or the association, the guardian shall notify each of its wards, the department, the court, designated counties, and all agencies or persons serving the ward in writing at least 30 days before the final transfer of ownership. This notice shall include the name and contact information of the new corporation.

(2) The corporate guardian shall remain responsible for each ward until a successor guardian is appointed by the court.

(3) The corporate guardian shall transfer the original records of its wards to the successor guardian appointed by the court.

DHS 85.08 Corporate guardian closing. (1) If a guardian is a corporation and the corporation's corporate status is revoked by the department of financial institutions or is voluntarily or involuntarily dissolved, or if the guardian is an unincorporated association and the association's status is voluntarily or involuntarily dissolved by the members or a court, or becomes inactive, the guardian shall notify each of its wards, the department, the court, designated counties, and all agencies or persons serving the ward in writing at least 30 days before the corporation closes.

(2) The corporate guardian shall remain responsible for each ward until a successor guardian is appointed by the court.

(3) The corporate guardian shall transfer the original records of its wards to the successor guardian appointed by the court.

Subchapter III — Personnel

DHS 85.09 Staff. (1) **GUARDIANSHIP PROGRAM MANAGER** (a) The guardian shall designate an employee who is 21 years or older and is fit and qualified under s. 50.03 (4), Stats., to manage its guardianship program.

(b) The guardianship program manager shall have a high school diploma or equivalency and have at least 3 years of relevant experience.

(c) The guardianship program manager shall be responsible for the ongoing training and competency of all employees.

(d) Any change of guardianship program manager shall be communicated to the department and the county department designated under s. 55.02, Stats., within 14 days following the effective date of the change.

(2) **OTHER EMPLOYEES.** (a) Except as provided in sub. (1) (a) each employee shall have the skills, education and ability to fulfill the employee's job requirements.

(b) An employee that has direct contact with a ward shall be at least 18 years old.

(3) **BACKGROUND CHECK.** At the time of hire, employment or contract and every four years after, the corporate guardian shall conduct and document a caregiver background check on each employee following the procedures in s. 50.065, Stats., and ch. DHS 12. A guardian may not employ or contract with a person who has been convicted of the crimes or offenses, or has a governmental finding of misconduct found in s. 50.065, Stats., and ch. DHS 12, Appendix A, unless the person has been approved under the department's rehabilitation review process as defined in ch. DHS 12.

(4) **EMPLOYEE RECORDS.** A separate record for each employee shall be maintained, kept current, and include all of the following:

(a) A written job description including duties, responsibilities and qualifications required for the employee.

(b) Beginning date of employment.

(c) Educational qualifications, relevant experience.

(d) The results of the background checks required under sub. (3).

(e) Documentation of training.

(5) **VOLUNTEERS.** The guardian may use volunteers if the volunteer receives the orientation and training necessary to assure the health, safety and welfare of wards.

DHS 85.10 Training. (1) **INITIAL TRAINING.** Before performing the duties of a guardian, each guardian representative shall receive training that includes all of the following:

(a) Job responsibilities.

(b) Prevention and reporting of ward abuse, neglect and misappropriation of ward property.

(c) Ward's rights and grievance procedures contained in chs. 54 and 55, Stats., s. DHS 85.13, and ch. DHS 94.

(d) Information regarding the needs and services for each ward for whom the guardian representative is responsible.

(e) Information about local resources available to meet the needs of wards.

(f) Agency policies and procedures.

(2) **CONTINUING EDUCATION.** Each guardian representative shall complete 20 hours of training every 24 calendar months. The training shall be relevant to the guardian representative's job assignment and designed to increase the effectiveness of the employee to meet the needs of the wards served.

DHS 85.11 Staffing. (1) The guardian shall at all times have an adequate number of staff who are qualified either by training or by experience to meet the needs of its wards, including knowledge of service needs and resources for meeting service needs.

(2) The guardian representative shall be accessible to the ward and to other persons concerned about the ward's well-being.

(3) The corporate guardian shall have staff available at all times to respond to an emergency situation as defined in s. DHS 94.02 (14).

(4) The corporate guardian shall have staff accessible to the local planning agency or interagency mechanism designated under s. 55.02, Stats.

DHS 85.12 Conflict of interest. (1) The corporate guardian may not be subject to undue influence from any party.

(2) When the corporate guardian is a part of a larger organization, the corporate guardian shall have designated staff with independent decision-making authority about the guardianship program.

(3) Pursuant to s. 55.03 (1), Stats., a guardian may not be a provider of protective services or protective placement for its ward.

(4) No corporate guardian may accept a guardianship from a court in a county in which a member of the corporate guardian's board of directors or any employee or volunteer of the corporate guardian is a member or employee of the community board organized under ss. 46.23, 51.42 or 51.437, Stats., or an employee of the county department of social services or human services or community programs or county board of supervisors or department of aging.

(5) A corporate guardian may not profit from their ward.

(6) The guardian shall not commingle personal or corporate funds with the funds of the ward. The guardian may consolidate and maintain wards' funds in accounts with other wards' funds if the guardian keeps separate and complete accounting of each ward's funds.

(7) Pursuant to s. 54.18 (3) (b), Stats., the corporate guardian may not lend funds of the ward to another individual or to an entity, unless the court first approves the terms, rate of interest, and any requirement for security.

(8) The corporate guardian may not engage in any financial transaction involving the ward's estate except as permitted under ch. 54, Stats., and this chapter.

Subchapter IV — Ward Services

DHS 85.13 Rights of wards. (1) Subject to the provisions of any court order regarding the division of power and authority between the guardian and the ward, and subject to any other provision of law, including ss. 54.18 through 54.25, Stats., every ward shall have the right to all of the following:

(a) Be treated with respect and dignity by the staff and volunteers of the corporate guardian.

(b) Be free from abuse, mistreatment, neglect and misappropriation of property.

(c) Confidentiality of health and personal information and records.

(d) Be informed of the services provided by the corporate guardian agency.

(e) Be consulted about decisions on the ward's behalf, to the extent the ward is capable.

(f) Have guardianship services provided in a way that constitutes the least restrictive intervention.

(g) Communicate freely with the advocate of the ward's choice.

(h) File a grievance or a complaint without retaliation.

DHS 85.14 Duties. (1) The guardian representative shall meet with the ward within 14 days of the court appointment as corporate guardian. At the first meeting, the guardian representative shall complete all of the following:

(a) Explain to the ward the role of the guardian.

(b) Explain the guardianship determination and order including the rights addressed by the court. The guardian representative shall be familiar with the provisions of the court order as they relate to limitations on the rights of the ward and those rights which are retained. The guardian representative shall explain to the ward the provisions of the court order as they relate to limitations on the rights of the ward and those rights which are retained.

(c) Explain the applicable rights of the ward contained in ss. 54.18 (1), 54.25 (2), 54.42 and 55.10 (2), Stats., s. 85.13 and the rules of the residence.

(d) Explain how to file a grievance and how to obtain a written copy of the grievance procedures for the living arrangement or for a service provider and the guardianship program.

(2) The guardian representative shall notify relevant agencies and individuals of the appointment guardianship and shall provide letters of guardianship to the ward's service providers and others, as necessary.

(3) If a medical evaluation was not completed within the past year, the guardian shall obtain an evaluation of the ward's condition, treatment, and functional status from the ward's treating physician, or appropriate treatment provider.

(4) The guardian representative shall fulfill the duties of a guardian of person pursuant to ss. 54.18 (2) and (3) and 54.25 (1), Stats. The guardian representative shall fulfill the powers assigned by the court and shall exercise only those powers granted to them by the court pursuant to s. 54.25 (2), Stats. A guardian representative shall be aware of and, if applicable, advocate for the ward's rights under ss. 50.09 and 51.61, Stats., and shall advocate for the least possible restrictions on the ward's liberty and exercise of constitutional and statutory rights, pursuant to ss. 54.18 (2) and 54.25 (2) (d) 3., Stats.

(5) A guardian representative of the estate shall fulfill the duties of a guardian of the estate pursuant to ss. 54.18 (2) and (3), 54.19, and 54.20 (1), Stats. A guardian representative shall fulfill the powers assigned by the court pursuant to s. 54.20, Stats., and shall seek court approval for those powers requiring court approval pursuant to s. 54.20 (2), Stats. In seeking compensation or reimbursement from the ward's funds, a guardian representative must ensure that any payments sought or received will not prevent the corporate guardian from providing adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.

(6) A corporate guardian must obtain court approval prior to receiving any compensation or reimbursement from the ward's funds, pursuant to s. 54.72, Stats. In seeking compensation or reimbursement from the ward's funds, a corporate guardian must ensure that any payments sought or received will not prevent the corporate guardian from providing adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.

(7) For a guardian of person, the guardian representative shall have face-to-face contact with the ward at least once every 3 months and more often as needed to meet the needs of the ward. The guardian representative shall take necessary action to see that the ward receives needed services, and to assure that the ward is well treated, properly cared for, and is provided with the opportunity to exercise legal rights. The guardian representative shall visit the ward in their residence at least annually.

(8) For guardian of estate, the guardian representative shall have personal contact every 3 months and more often as needed to meet the needs of the ward. The guardian representative shall take necessary action to see that the ward receives needed services, and to assure that the ward is well treated, properly cared for, and is provided with the opportunity to exercise legal rights. The guardian representative shall have face-to-face contact with the ward at least annually.

DHS 85.15 Records. (1) The corporate guardian shall maintain a separate file for each ward including all of the following information and documents as applicable:

(a) Name, date of birth, address, telephone number, and social security number. Guardians of person shall also maintain information regarding the ward's medical coverage, physician, diagnoses, medications, and allergies to medications.

(b) A current photograph of the ward.

(c) All relevant legal documents involving the ward.

(d) Advance directives.

(e) A list of key contacts.

(f) A list of service providers, contact information, a description of services provided to the ward and progress reports as applicable.

(g) Documentation of all ward and collateral contacts, including the date, time, and activity.

(h) Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the ward.

(i) A guardianship inventory, accounts and annual reports as required by statute, including all supporting financial statements, records and financial reports.

(j) Assessments regarding the ward's past and present medical, psychological, and social functioning, including relevant family medical information.

(k) Documentation of the ward's known values, preferences, and wishes regarding medical and other care and services including all advanced directives made prior to guardianship, and financial matters and other services.

(L) A personal and social history of the ward including a family history.

(2) If guardianship is transferred, the corporate guardian shall transfer the original record required in this section to the successor guardian.

Subchapter V — Withdrawal of Approval

DHS 85.16 Actions affecting approval. (1) If at any time the department determines that a corporate guardian no longer meets the criteria under this chapter, the department may withdraw its approval upon 30 day written notice to all of the following:

- (a) Corporate guardian.
 - (b) All courts that assigned the corporate guardian's guardianships.
 - (c) The ward.
 - (d) The ward's family.
 - (e) Any other interested parties.
 - (f) The county agency designated under s. 55.02, Stats.
- (2) The corporate guardian shall comply with the provisions in s. DHS 85.08 (2) regarding a corporate guardian closing.

DHS 85.17 Appeal of decisions. Any party adversely affected by a decision of the department about the suitability of a private non-profit corporation or an unincorporated association for corporate guardianship may appeal that decision to the department of administration's division of hearings and appeals under ss. 227.42 and 227.44 to 227.50, Stats. The request for a hearing shall be filed with the department of administration's division of hearings and appeals within 10 working days after receipt of the notice of denial. The request for hearing is considered filed when the request is received by that division.

Note: To appeal a decision by the department, send a request for a hearing to Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707.

Notice of Hearings

Health Services

*Health, Chs. DHS 110—
CR 09-062*

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 254.34 (1) (a), 254.365 (4) and 254.37 (3), Stats., the Department of Health Services will hold public hearings to consider the proposed creation, repeal, renumbering and amendment of portions of Chapter DHS 157, Radiation Protection, relating to the regulation of radiation producing

devices and radioactive materials, and affecting small businesses.

Hearing Information

Date and Time

October 13, 2009
Tuesday
10:00 to 11:30 AM

Location

Medical College of Wisconsin
8701 Watertown Plank Rd.
Room H1250
Milwaukee, WI

October 14, 2009
Wednesday
10:00 to 11:30 AM

Department of Health Services
1 W. Wilson Street
Room B139
Madison, WI

Accessibility

English

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting Paul Schmidt at 608 267-4792 or paul.schmidt@dhs.wisconsin.gov. You must make your request at least 7 days before the activity.

Spanish

DHS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con Paul Schmidt al número 608 267-4792 or paul.schmidt@dhs.wisconsin.gov. Debe someter su petición por lo menos 7 días de antes de la actividad.

Hmong

DHS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau Paul Schmidt ntawm 608 267-4792 or paul.schmidt@dhs.wisconsin.gov. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnuv ua ntej qhov hauj lwm ntawd.

Agency Contact Person

Paul Schmidt, Chief
Radiation Protection Section
P.O. Box 2659
Madison, WI 53701-2659
608-267-4792

Submission of Written Comments

Comments may be submitted to the agency contact person that is listed above. The deadline for submitting comments is October 21, 2009.

Analysis Prepared by the Department of Health Services

Statutes interpreted

Sections 254.31 to 254.45, Stats., and 42 USC 2011 to 2114.

Statutory authority

Sections 227.11 (2) (a), 254.34 (1) (a), 254.365 (4) and 254.37 (3), Stats.

Explanation of agency authority

As specified under s. 254.34 (1), Stats., the Department is the state radiation control agency and is required under ss. 254.34 (1) (a), 254.365 (4), and 254.37 (3), Stats., to promulgate rules pertaining to the use of radiation in Wisconsin. Specifically, the Department is required to promulgate and enforce rules pertaining to sources of ionizing radiation and for registration and licensing sources of ionizing radiation, and enforcement as may be necessary to prohibit and prevent unnecessary radiation exposure. The Department's rules for by-product material, source material, and special nuclear material are required to be in accordance with 42 USC 2021 (o) and be otherwise compatible with the requirements under 42 USC 2011 to 2114 and regulations adopted under 42 USC 2011 to 2114.

Related statute or rule

Chapter NR 809 incorporates the radioactivity standards for community water systems and the analytical methods established in ss. DHS 157.95 and 157.96. The Department of Natural Resources applies these standards to community drinking water systems.

Chapter DHS 163 establishes requirements for identification, removal and reduction of lead-based paint hazards. Lead in paint analysis requires use of a portable device containing radioactive material which is required to be licensed under ch. DHS 157. Section DHS 157.05 (4) requires that any person providing training for certified lead inspectors or risk assessors to meet the training requirements of s. DHS 163.24 (a) 1. and 3. and to complete an additional 8 hours of radiation safety training.

Plain language analysis

Under s. 254.34 (1) (a) Stats., the Department is responsible for developing and enforcing rules, including registration and licensing of sources of ionizing radiation, to prohibit and prevent unnecessary radiation exposure. The Department is also responsible for maintaining compliance with the Agreement signed by Governor Doyle in 2003 and the Nuclear Regulatory Commission (NRC) that transferred regulatory authority over certain radioactive materials from the NRC to the state. Under the Agreement, the Department is responsible for licensing and inspecting radioactive materials commonly used in medicine, industry, research and education. NRC staff periodically evaluate the state regulatory program.

One of the requirements of this Agreement is Wisconsin's assurance that it will revise the radioactive material portions of ch. DHS 157 within 3 years of any applicable changes in Title 10 Code of Federal Regulations. Title 10 CFR has been revised since ch. DHS 157 was last revised in 2006. Therefore, the Department proposes to modify the radioactive material requirements in ch. DHS 157.

In addition, the Department proposes to revise the portions of ch. DHS 157 pertaining to x-rays to reflect new diagnostic and therapeutic technologies, experience with implementing the current rule, changes in comparable federal regulations in 21 CFR Part 1020, and input provided to the Department by an advisory group that included representatives of academic and medical facilities, radioactive materials users, x-ray users and large and small businesses.

The proposed revisions to ch. DHS 157 accomplish the following:

- Update the radiation protection and regulatory requirements for radioactive materials to reflect changes

in federal regulations in Title 10, Code of Federal Regulations Parts 19, 20, 31, 33–36, 39, 40, 70, 71 and 150 and applicable portions of Title 49 (transportation), Code of Federal Regulations.

- Incorporate new security requirements for certain radioactive materials, initially implemented nationally under order of the Nuclear Regulatory Commission.
- Update the radiation safety requirements for x-ray producing devices to reflect new diagnostic and therapeutic technologies, current federal regulation and the input of an ad hoc advisory group representing a cross-section of regulated users.
- Revise operator qualifications for fluoroscopy machines.
- Incorporate minor corrections to rule language based on the Department's experience administering the current rule.
- Incorporate minor revisions to operator qualification, shielding and quality testing requirements.

Comparison with federal regulations

Wisconsin's Agreement with the Nuclear Regulatory Commission requires the Department to incorporate relevant changes to federal radioactive material regulations into its radiation protection rules within 3 years of the effective date of the federal regulations. The proposed changes to ch. DHS 157 ensure continued compatibility with new federal radioactive material regulations in 10 CFR Pts. 19, 20, 31, 33–36, 39, 40, 70, 71 and 150 and applicable parts of Title 49 CFR relating to transportation as required by s. 254.34 (1), Stats.

Comparison with rules in adjacent states

Illinois

Illinois is an Agreement state with the Nuclear Regulatory Commission. As a result, Illinois law contains radiation protection and regulatory requirements very similar to those in ch. DHS 157 and compatible with equivalent federal regulations in Titles 10 and 49, Code of Federal Regulations.

Iowa

Iowa is an Agreement state with the Nuclear Regulatory Commission. As a result, Iowa law contains radiation protection and regulatory requirements very similar to those in ch. DHS 157 and compatible with equivalent federal regulations in Titles 10 and 49, Code of Federal Regulations.

Michigan

Michigan is not an Agreement state with the Nuclear Regulatory Commission. However, Michigan has formally declared its intent to become an agreement state with the Nuclear Regulatory Commission. As a result, Michigan law does not contain regulations equivalent to most of ch. DHS 157. The Nuclear Regulatory Commission is currently responsible for regulating the majority of radioactive material use in Michigan under Titles 10 and 49, Code of Federal Regulations.

Minnesota

Minnesota is an Agreement state with the Nuclear Regulatory Commission. Minnesota adopted new radiation protection regulations for radioactive materials effective January 1, 2005. As a result, Minnesota law contains radiation protection and regulatory requirements very similar to those in ch. DHS 157 and compatible with equivalent federal regulations in Titles 10 and 49, Code of Federal Regulations.

Summary of factual data and analytical methodologies

The methods specified in s. 227.114, (2), Stats., for reducing a rule's impact on small business have not been incorporated in the proposed rules because incorporating any methods may be contrary to the explicit state statutory requirements for radiation control, federal regulatory and statutory requirements for radiation control, Agreement state requirements, and the state's public policy on radiation control stated in s. 254.33, Stats. Because of the Department's limited use of discretion in developing the content of the proposed rules, the Department has limited its analysis of the proposed rules affect on the small businesses regulated by ch. DHS 157 to the affect that the proposed revisions in x-ray regulatory requirements will have on those businesses.

The Department referred to all of the following to draft the proposed rules and the small business fiscal impact analysis:

1. The input of an ad hoc rules advisory group that included representatives of academic and medical facilities, radioactive materials users, x-ray users and large and small businesses.

2. An Agreement state rule template called the "Suggested State Regulations for the Control of Radiation" (SSRCR) developed by the Conference of Radiation Control Program Directors, Inc. (CRCPD). The CRCPD is a national organization of primarily state radiation control staff that supports and represents state radiation control programs. The SSRCR is developed with the involvement of federal radiation agencies, such as the Nuclear Regulatory Commission, the Food and Drug Administration and the Environmental Protection Agency. The SSRCR is also continually updated and used by most of the 35 existing Agreement states to help meet federal requirements.

3. Requirements of Titles 10, 21, and 49 of the Code of Federal Regulations; 42 USC; ss. 254.31 to 254.45, Stats., and the Agreement between Wisconsin and the Nuclear Regulatory Commission.

4. The 2002 Economic Census – Wisconsin Geographic Series, which is compiled by the U.S. census bureau every 5 years for each year ending in "2" and "7". The U.S. census bureau is currently compiling the 2007 census information. This information will not become fully available until 2010. The information provided by the Economic Census includes the North American Industry Classification Codes, information on industries, business revenues, sizes, and employment. The Department used this information to approximate business size and any possible percentage increase in business costs due to the proposed revisions in x-ray regulatory requirements.

5. Criteria adopted by the Department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department's proposed rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department's criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index (CPI) or reduce revenues by more than the prior year's CPI. For the purposes of this rulemaking, we used 2008 as the index year; the 2008 CPI is estimated to be 3.8%. The consumer price index is compiled by the U.S. Department of

Labor, Bureau of Labor Statistics and measures, among other things, the rate of inflation.

6. Section 227.114 (1) (a), Stats., which defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

Analysis and supporting documents used to determine effect on small business

The Department is the state's radiation control agency and is required under ss. 254.34 (1) (a), 254.365 (4), and 254.37 (3), Stats., to promulgate rules pertaining to the use of radiation in Wisconsin. Specifically, the Department is required to promulgate and enforce rules pertaining to sources of ionizing radiation, for registration and licensing sources of ionizing radiation, and to prohibit and prevent unnecessary radiation exposure.

The Department's x-ray registration and inspection program, and radioactive materials licensing and inspection program, are both 100% fee supported by the annual fees authorized under ss. 254.35 (3) and 254.365 (5), Stats. There are no fee increases proposed in this rule revision.

The fiscal impact to x-ray registrants relates to proposed requirements in the following sections: ss. DHS 157.74 (2) (L), 157.76 (11) and (12), 157.80 (2) (a) 2., 157.82 (2) and (5), and 157.85 (13), (14) and (16). The proposed requirements and the fiscal impact on small business are detailed below.

DHS 157.74 (2) (L). This new subsection requires radiation safety committee oversight of all facilities that have 2 or more therapeutic radiation machines, regardless of the type of device (external or internal) used. The requirement for a radiation safety committee already exists for radioactive materials under s. DHS 157.61 (1) (e). The majority of therapeutic radiation machines currently being used in Wisconsin are used at large medical facilities that do not qualify as small businesses under s. 227.114 (1) (a), Stats. and have existing radiation safety committees. In the event that a facility without a radiation safety committee acquires 2 or more therapeutic radiation machines, they can utilize existing staff to form a radiation safety committee required under this section. As a result, the Department expects this new requirement to have minimal impact on any facility, including small business.

DHS 157.76 (11). Fluoroscopy devices, used to obtain continuous x-ray images of the body, produce very high radiation exposure rates with exposure time directly controlled by the device operator. The Department is aware of fluoroscopy operators receiving substantial exposure from use of fluoroscopic devices, indicating a lack of awareness of safety requirements. As a result, the Department is proposing minimum training for all personnel that operate fluoroscopy devices, regardless of the type of facility. This new requirement will impact the small percentage (less than 10%) of medical clinics, chiropractic and veterinary facilities with fluoroscopy devices, all of which are classified as a small businesses under s. 227.114 (1) (a), Stats. The proposed training requirement will also affect all large hospitals and clinics that routinely utilize fluoroscopy by requiring physicians as well as other operators to complete minimum training. The proposed training will take a minimum of 8 hours to complete. This training can be accomplished in a variety of ways, including in house (on site) training and continuing education, and can be rolled into the business'

existing training infrastructure. As a result, the Department expects there will be a small cost associated with this training to all facilities using fluoroscopy devices, including small business.

DHS 157.76 (12). The Department is proposing requiring fluoroscopy units to have their radiation output measured annually by a qualified person on staff or under contract. This is consistent with the recommendations of the Conference of Radiation Control Program Directors (CRCPD) in their suggested state regulations. There is minimal effort required to meet this requirement because fluoroscopy units already have either qualified staff or contractors on hand. As a result, the Department anticipates minimal fiscal impact on any facility, including small business.

DHS 157.80 (2) (a) 2. The Department is proposing that operators of computed tomography (CT) x-ray systems for veterinary use be qualified or otherwise trained to use the device. This requirement will apply to all veterinary facilities using CT x-ray systems, which is currently a very small percentage of the total facilities statewide (approximately 4 sites). The small number of veterinary facilities impacted by this requirement are classified as a small business. The proposed training can be obtained from a device vendor or other qualified staff. To the Department's knowledge, the few veterinary facilities with CT x-ray systems already meet this requirement. Due to the very small number of impacted facilities and the access to training, the Department anticipates minimal fiscal impact to small businesses.

DHS 157.82 (2) and (5). These 2 subsections jointly require all electronic brachytherapy users to receive device specific training prior to operating this new technology. The proposed training is consistent with the requirements for other therapeutic radiation machines in ch. DHS 157. Currently, this new technology is not being used by any facility classified as a small business under s. 227.114 (1) (a), Stats.

DHS 157.85 (13), (14), (16). These subsections establish quality assurance requirements for electronic brachytherapy devices as recommended by a national organization, the American Association of Physicists in Medicine (AAPM). Currently, this new technology is not being used by any facility classified as a small business under s. 227.114 (1) (a), Stats.

Small Business Impact

Pursuant to the foregoing analysis, the Department does not anticipate that the proposed revisions will have a significant economic impact on small businesses.

Small business regulatory coordinator

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Fiscal Estimate

Summary

Under s. 254.34 (1) (a), Stats., the Department of Health Services is responsible for developing and enforcing rules, including registration and licensing of sources of ionizing radiation. Sources of ionizing radiation include x-ray producing devices. The Department is also responsible for maintaining compliance with an agreement between Wisconsin and the federal Nuclear Regulatory Commission (NRC) that transferred regulatory authority over certain radioactive materials from the NRC to the state.

The current rule revision is intended to bring Wisconsin into compliance with the most recent changes to federal radiation protection and regulatory requirements. No fiscal effect is anticipated as a result of the incorporation of new federal standards into DHS 157.

In addition, the Department proposes to update certain radiation safety requirements. Since the last revision of DHS 157 in 2006, new x-ray technologies with potential for significant radiation exposures to operators and patients have become more prevalent in the state. This rule revision proposes operator qualification and safety requirements for these new technologies. The new x-ray technologies are primarily being used by large, medical facilities not classified as a small business under s. 227.114 (1) (a), Stats. In a few cases, they are being used by a small subset of veterinary facilities that are classified as a small business. The training needed to become qualified to operate these new technologies is available and may be accomplished in-house by incorporating into existing radiation safety programs. Some facilities are already providing operator training to meet facility requirements. Any additional training cost will vary by facility, but is not expected to be significant for any facility.

The Department is also proposing new quality assurance requirements for the digital x-ray systems that are being increasingly used in medical, dental, chiropractic and podiatric offices within the state. Digital x-ray systems use a digital (i.e., electronic) image receptor that replaces the use of x-ray film. The Department does not expect a significant cost to any facility from these new requirements.

Finally, the Department is proposing minimum training for all operators of fluoroscopy devices, including physicians. Fluoroscopy devices produce a continuous x-ray image of the body with potential for significant radiation exposure to both the patient and medical personnel. Fluoroscopy devices are used by most hospitals, plus a small subset of medical clinics, chiropractic and veterinary facilities. Although there will be a cost to complete the operator qualification training, either thru formal continuing education or in-house training, it is anticipated that there will be only a minimal fiscal impact to any facility.

The proposed changes to x-ray safety requirements are not the result of the changes in federal standards, although the changes are consistent with safety standards recommended by national organizations, specifically the American Association of Physicists in Medicine (AAPM) and the Conference of Radiation Control Program Directors (CRCPD). The new standards can be incorporated into the training required of most occupations that use radiation producing devices and thus is not expected to be a significant additional cost to any facility or individual. The Department is not proposing a fee increase in this rule revision.

State fiscal effect

None.

Local government fiscal effect

None.

Private sector fiscal effect

Increase costs. Will not have significant economic impact on a substantial number of businesses.

Long-range fiscal implications

None known.

Text of Proposed Rule

SECTION 1. DHS 157.03 (5), (6), (32m) (a), (33) (a), and (50) (intro.) and (a) are amended to read:

DHS 157.03 (5) “Accelerator” means any machine capable of accelerating electrons, protons, deuterons or other charged particles in a vacuum and of discharging the resultant particle or other radiation into a medium at energies usually in excess of one MeV. Particle accelerator is considered an equivalent term.

(6) “Accelerator-produced radioactive material” means any material made radioactive by an accelerator.

(32m) (a) Meets the training requirements in s. DHS 157.61 (8) (a) and (11).

(33) (a) Meets the requirements in s. DHS 157.61 (9) (a) and (11).

(50) “Byproduct material” means either any of the following:

(a) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or ~~utilizing~~using special nuclear material.

SECTION 2. DHS 157.03 (50) (c) to (e), (75r), and (103r) are created to read:

DHS 157.03 (50) (c) Any discrete source of radium-226 that has been produced, extracted or converted after extraction, for use for a commercial, medical or research activity.

(d) Any material that has been made radioactive by use of a particle accelerator, and is produced, extracted, or converted after extraction, for use for a commercial, medical or research activity.

(e) Any discrete source of naturally occurring radioactive material, other than source material, that the NRC, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security, and is extracted or converted after extraction for use in a commercial, medical or research activity.

(75r) “Consortium” means an association of medical use licensees and a positron emission tomography (PET) radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility must be located at an educational institution, a federal facility or a medical facility.

(103r) “Discrete source” means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

SECTION 3. DHS 157.03 (191) and (200) are amended to read:

DHS 157.03 (191) “Licensed practitioner” means a chiropractor, dentist, physician, podiatrist, physician’s assistant, nurse practitioner or radiologist’s assistant licensed in the state of Wisconsin.

(200) “Low specific activity – III” or “LSA-III material” means solids, such as consolidated wastes or activated

materials, excluding powders, that satisfy the requirements of 10 CFR 71.77, for which all of the following apply:

SECTION 4. DHS 150.03 (221m) is created to read:

DHS 150.03 (221m) “Nationally tracked source” means a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in Appendix T. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

SECTION 5. DHS 157.03 (222), (374) (a), (c) and (d), (382), (388), (402m), (407), and (413) are amended to read:

(222) “NARM” means any naturally occurring or accelerator-produced radioactive material. ~~It does not include byproduct, source or special nuclear material.~~

(374) (a) For capacitor energy storage equipment, peak tube potential in kV kilovoltage and quantity of charge in ~~mAs~~milliamperage-seconds (mAs).

(c) For CT ~~x-ray system~~equipment designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in ~~mA~~milliamperes (mA), x-ray pulse width in milliseconds, and the number of x-ray pulses per scan; or the product of tube current, x-ray pulse width, and the number of x-ray pulses per scan expressed as mAs.

(d) For CT ~~x-ray system~~equipment not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent.

(382) “Therapeutic radiation machine” means x-ray, gamma ray or electron-producing equipment designed and used for external beam or internal radiation therapy.

(388) “Total effective dose equivalent” or “TEDE” means the sum of the ~~deep~~ effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(402m) “Unirradiated uranium” means uranium containing not more than 2×10^3 Bq of plutonium per gram of uranium-235, not more than 9×10^6 Bq of fission products per gram of uranium-235, and not more than 5×10^{-3} g of uranium-236 per gram of uranium-235.

(407) “Useful beam” means the radiation ~~emanating from which passes through~~ the tube housing port ~~or the radiation head and passing through and~~ the aperture of the beam-limiting device when the exposure ~~controls are in a mode to cause the system to produce radiations~~switch or timer is activated.

(413) “Waste” means those ~~materials having a low level of radioactivity containing that are acceptable for disposal in a land disposal facility and are not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in 42 USC 2014~~low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste,

spent nuclear fuel, or byproduct material as defined in DHS 157.03 (50) (b) to (e).

SECTION 6. DHS 157.03 (430m) is created to read:

DHS 157.03 (430m) "X-ray control" means a device which controls input power to the x-ray high-voltage generator and/or the x-ray tube. It includes equipment such as timers, phototimers, automatic brightness stabilizers, and similar devices, which control the technique factors on an x-ray exposure.

SECTION 7. DHS 157.05 (5) title is created to read:

DHS 157.05 (5) PHYSICAL CONTROLS.

SECTION 8. DHS 157.09 (2) (a) 2., (c) 2. intro., 3., and (d) title are amended to read:

DHS 157.09 Exemptions. (2) EXEMPTIONS OF RADIOACTIVE MATERIAL OTHER THAN SOURCE MATERIAL. (a) 2. A manufacturer, processor or producer of a product or material is exempt from the requirements of subch. II if they transfer radioactive material contained in a product or material in concentrations not in excess of those in Appendix A and introduced into the product or material by a licensee holding a specific license issued by the department, the NRC or another agreement state expressly authorizing such introduction. This exemption does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(c) 2. Timepieces, hands or dials containing promethium-147 ~~or radium-226~~, when measured through 50 milligrams per square centimeter of absorber, not exceeding the following radiation dose rate:

3. Timepieces containing up to 37 kBq (1.0 microcurie) of radium-226 per timepiece acquired prior to the effective date of August 1, 2002 the effective date of this section ... [legislative reference bureau inserts date].

(d) (title) *Self-luminous products containing tritium, krypton-85, or promethium-147 or radium-226.*

SECTION 9. DHS 157.09 (2) (d) 4. is repealed.

SECTION 10. DHS 157.09 (2) (f) and (g) 3. are amended to read:

DHS 157.09 (2) (f) *Resins containing scandium-46 and designed for sand-consolidation in oil wells.* A person is exempt from this subchapter to the extent that the person receives, possesses, uses, transfers, owns or acquires synthetic plastic resins containing scandium-46 which are designed for sand consolidation in oil wells. These resins shall have been manufactured or initially transferred for sale or distribution under a specific license issued by the NRC, or shall have been manufactured under the specifications contained in a specific license issued by the department or any agreement state to the manufacturer of the resins ~~under licensing requirements equivalent to those in 10 CFR 32.16 and 32.17.~~ This exemption does not authorize the manufacture or initial transfer for sale or distribution of any resins containing scandium-46.

(g) 3. Any person who desires to manufacture, prepare, process, produce, package, repack, or transfer for commercial distribution such capsules shall apply for and receive a specific license according to ~~s. DHS 157.13 (4) (i)~~ 10 CFR 32.21.

SECTION 11. DHS 157.11 (2) (b) 3. b., c., g. and h. are amended to read:

DHS 157.11 (2) (b) 3. b. Ensure that the device is tested for leakage of radioactive material and proper operation of the "on-off" mechanism and indicator, if any, at no longer than 6-month intervals or at such other intervals as are specified in the label, except for devices containing only ~~krypton~~, tritium, not more than 3.7 MBq (100 microcuries) of other beta and gamma-emitting material, or 0.37 MBq (10 microcuries) of alpha-emitting material, and devices held in storage in the original shipping container prior to the initial installation. Devices containing only krypton need not be tested for leakage of radioactive material.

c. Ensure that the tests required by this subd. par. b. and other testing, installation, servicing and removal from installation involving the radioactive material, its shielding or containment, are performed under the instructions provided by the labels, or by a person holding an applicable specific license from the department, the NRC, an agreement state or a licensing state to perform such activities.

g. Except as provided in subd. ~~3.h. pars. h. and j.~~, transfer or dispose of the device containing radioactive material only by transfer to a specific licensee of the department, the NRC, an agreement state or a licensing state whose specific license authorizes that person to receive the device and within 30 calendar days after transfer of a device to a specific licensee or export of the device shall furnish to the department a written report containing identification of the device by manufacturer's or initial transferer's name and model and serial number ~~and~~, the name ~~and~~, address and license number of the person receiving the device, and the date of the transfer. ~~No report is required if the device is transferred to the specific licensee to obtain a replacement device.~~

h. Transfer the device to another general licensee only where the device is held in storage in the original shipping container at its intended location of use prior to initial use by a general licensee, or where the device remains in use at a particular location. In the latter case, the transferor shall give the transferee a copy of sub. (2) (b) and any safety documents identified in the label on the device and within 30 calendar days of the transfer. The licensee shall report to the department the manufacturer's name and model and serial number of device transferred, the name and address of the transferee, and the name, phone number and position of an individual who may constitute a point of contact between the department and the transferee.

SECTION 12. DHS 157.11 (2) (b) 3. j. to m. are created to read:

DHS 157.11 (2) (b) 3. j. Not export the device containing byproduct material except as allowed under 10 CFR Part 110.

k. Respond to written requests from the department to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within the same time period, request in writing a longer time period and provide written justification why it cannot comply.

L. Appoint an individual responsible for having knowledge of the appropriate requirements of this chapter and the authority for taking required actions to comply with these requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with the appropriate requirements of this chapter. This appointment does not relieve the general licensee of any of its responsibility under this chapter.

m. May not hold devices that are not in use for longer than 2 years. If devices with shutters are not being used, the shutter shall be locked in the closed position. The testing required

under this subd. par. b. need not be performed during the period of storage only. When devices are put back into service or transferred to another person, and have not been tested within the required time interval, they shall be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby.

SECTION 13. DHS 157.11 (2) (b) 4. is amended to read:

DHS 157.11 (2) (b) 4. The general license under this paragraph does not authorize the manufacture or import of devices containing radioactive material.

SECTION 14. DHS 157.11 (2) (h) is created to read:

DHS 157.11 (2) (h) *General license relating to certain items and self-luminous products containing radium-226.* 1. A general license is issued to own, receive, acquire, possess, use or transfer radium-226 contained in the following products:

a. Antiquities originally intended for use by the general public that were manufactured in the 19th and 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts and healing pads.

b. Intact timepieces containing greater than 37 kBq (1 microcurie) of radium-226, nonintact timepieces, and timepiece dials and hands no longer installed in timepieces.

c. Self-luminous items installed in air, marine or land vehicles.

d. All other luminous products, provided that no more than 100 items are used or stored at the same location at any one time.

e. Small radium sources, such as discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations, electron tubes, lightning rods, ionization sources or static eliminators, containing no more than 37 kBq (1 microcurie) of radium 226.

2. The general license in this paragraph is exempt from the requirements of subchs. III and X with the exception of ss. DHS 157.30 (1), 157.32 (1) and (2). This exemption does not apply to any person specifically licensed under this chapter.

3. A person who owns, receives, acquires, acquires, possesses, uses or transfers radium-226 under the general license in subd. 1. shall do all the following:

a. Report to the department under DHS 157.32 any stolen, lost or missing radioactive material.

b. Not abandon the product containing radium-226. The product, and any radioactive material from the product, shall be disposed of according to the requirements of DHS 157.30 (8), by transfer to a person authorized under a specific license to receive the radium-226, or as approved by the department.

c. Not export products containing radium-226 except under 10 CFR 110.

d. Respond to written requests from the department to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within the same time period, request in writing a longer time period and provide written justification why it cannot comply.

4. The general license in subd. 1. does not authorize the manufacture, assembly, disassembly, repair, or import of

products containing radium-226, except that timepieces may be disassembled and repaired.

SECTION 15. DHS 157.12 (1) is renumbered DHS 157.12 (1) (a) and as renumbered is amended to read:

DHS 157.12 (1) REGISTRATION REQUIREMENT. (a) No person may possess, receive, use, own or transfer a device purchased under a general license that contains at least 370 MBq (10 millicuries) of cesium-137, 3.7 MBq (0.1 millicurie) of strontium-90, 37 MBq (1 millicurie) of cobalt-60, 3.7 MBq (0.1 millicurie) of radium-226 or 37 MBq (1 millicurie) of americium-241 or any other transuranic unless that person registers annually with the department and pays a fee as prescribed in sub.(6). Each address for a location of use as described in sub. (3) (d) represents a separate general licensee and requires a separate registration.

SECTION 16. DHS 157.12 (1) (b) is created to read:

DHS 157.12 (1) (b) A person in possession of devices that meet the criteria for registration under par. (a) shall notify the department of bankruptcy as specified in s. DHS 157.13 (10) (e) and (f).

SECTION 17. DHS 157.13 (1) (j) is created to read:

DHS 157.13 (1) (j) 1. A request for authorization for the production of PET radionuclides or evidence of an existing license issued by the department, NRC or an agreement state under this chapter or equivalent regulations for a PET radionuclide production facility within its consortium from which it receives PET radionuclides.

2. Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in s. DHS 157.13 (4) (i).

3. Identification of individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in s. DHS 157.68.

4. Information identified in s. DHS 157.13 (4) (i) 3. on the PET drugs to be noncommercially transferred to members of a consortium.

SECTION 18. DHS 157.13 (4) (g) 2. b., d. and e., and (i) (title), (intro.) and 2. a. are amended to read:

DHS 157.13 (4) (g) 2. b. Cobalt-57 in units not exceeding 370 ~~MBqkBq~~ (10 microcuries) each.

d. Iodine-125 in units not exceeding 370 ~~MBqkBq~~ (10 microcuries) each.

e. Mock Iodine-125 in units not exceeding 1.85 ~~MBqkBq~~ (0.05 microcurie) of iodine-129 and 185 ~~MBqkBq~~ (0.005 microcurie) of americium-241 each.

(i) Manufacture, preparation, or transfer for commercial distribution or noncommercial transfer to medical use licensees in a consortium of radioactive drugs containing radioactive material for medical use under subchapter VI. The department shall approve an application for a specific license to manufacture, prepare, or transfer for commercial distribution or noncommercial transfer to medical use licensees in a consortium drugs containing radioactive material for use by a person authorized under subchapter VI if all the following conditions are satisfied:

2. a. Registered or licensed with the FDA as a ~~drug manufacturer~~ the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding or processing of a drug under 21 CFR 207.20 (a).

SECTION 19. DHS 157.13 (4) (i) 2. e. is created to read:

DHS 157.13 (4) (i) 2. e. Registered with a state agency as a positron emission tomography (PET) drug production facility.

SECTION 20. DHS 157.13 (4) (i) 4. a. and b. and 6. a. are amended to read:

DHS 157.13 (4) (i) 4. a. A label is affixed to each transport radiation shield, whether the shield is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution or noncommercial transfer to medical use licensees in a consortium. The label shall include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

b. A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution or noncommercial transfer to medical use licensees in a consortium. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container may be correlated with the information on the transport radiation shield label.

6. a. Possess and use instrumentation to measure the radioactivity of the drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha, beta, or photon-emitting drugs prior to transfer for commercial distribution or noncommercial transfer to medical use licensees in a consortium.

SECTION 21. DHS 157.13 (4) (i) 4. d. is created to read:

DHS 157.13 (4) (i) 4. d. Measure the concentration of radionuclide contaminant in the first eluate after receipt of a molybdenum-99/technetium-99m or strontium-82/rubidium-82 generator, test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, according to s. DHS 157.63 (3), and retain a record of each measurement under s. DHS 157.71 (14).

SECTION 22. DHS 157.13 (4) (j) (intro.) is amended to read:

DHS 157.13 (4) (j) *Manufacture and distribution of sources or devices containing radioactive material for medical use*. The department shall approve an application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under subch. VI for use as a calibration, transmission or reference source or for the uses listed in ss. DHS 157.65 (1), 157.66 (1) ~~and~~ 157.67 (1) and 157.70 if all of the following conditions are satisfied:

SECTION 23. DHS 157.13 (17) (b) 4. Note and (c) 2. Note and (19) are created to read:

DHS 157.13 (17) (b) 4. Note: Submit report to the Department via telephone at (608) 267-4797 or via facsimile at (608) 267-3695.

(c) 2. Note: Submit written reports to the Department at: Department of Health Services, Radiation Protection Section, P.O. Box 2659, Madison WI 53701-2659.

(19) **SERIALIZATION OF NATIONALLY TRACKED SOURCES**. A licensee who manufactures a nationally tracked source shall assign a unique serial number to each

nationally tracked source. Serial numbers shall be composed only of alpha-numeric characters.

SECTION 24. DHS 157.22 (1) (c) 1. is amended to read:

DHS 157.22 Occupational dose limits. (1) (c) 1. When the external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent shall be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a method approved by the department. The assigned deep-dose equivalent shall be for the part of the body receiving the highest exposure. The assigned shallow-dose equivalent shall be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. The deep-dose equivalent, lens-dose equivalent and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

SECTION 25. DHS 157.25 (2) (a) 6. is repealed.

SECTION 26. DHS 157.29 (6) (e) 1. is amended to read:

DHS 157.29 (6) (e) 1. Removable radioactive surface contamination exceeds the limits of s. ~~DHS 157.94 (1)~~ DHS 157.94 (1) (i).

SECTION 27. DHS 157.30 (1) (a) 4. and (6) (b) are amended to read:

DHS 157.30 (1) (a) 4. Dispose of as authorized under ~~subsubs. (2), (3), (4) or (5)~~ (8).

(6) **TRANSFER FOR DISPOSAL AND MANIFESTS**. (b) Any licensee shipping radioactive waste or byproduct material as defined in s. DHS 157.03 (50) (c) to (e) intended for ultimate disposal at a licensed land disposal facility shall document the information required in Appendix G, Section I and transfer this recorded information to the intended consignee in accordance with the requirements of Appendix G.

SECTION 28. DHS 157.30 (8) is created to read:

DHS 157.30 (8) **DISPOSAL OF CERTAIN BYPRODUCT MATERIAL**. (a) Licensed byproduct material as defined in DHS 157.03 (50) (c) to (e) may be disposed of under 10 CFR 61 or equivalent agreement state regulations, even though it is not defined as low level radioactive waste. Any licensed byproduct material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed by the NRC under 10 CFR 61 or an agreement state with equivalent regulations shall meet the requirements of 10 CFR 20.2006.

(b) A licensee may dispose of byproduct material as defined in s. DHS 157.03 (50) (c) to (e) at a disposal facility authorized to dispose of such material under federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005.

SECTION 29. DHS 157.32 (9) is created to read:

DHS 157.32 (9) **REPORTS OF TRANSACTIONS INVOLVING NATIONALLY TRACKED SOURCES**. A licensee who manufactures, transfers, receives, disassembles or disposes of a nationally tracked source shall submit a report to the Nuclear Regulatory Commission that complies with the requirements of 10 CFR 20.2207.

SECTION 30. DHS 157.42 (1) (a) and (b) are amended to read:

DHS 157.42 (1) (a) An entrance control of the type described in s. DHS 157.26 (1) (a) 1. that causes the radiation

level upon entry into the area to be reduced. Entrance control devices that reduce the radiation level upon entry shall be tested monthly.

(b) Both conspicuous visible and audible warning signals to warn of the presence of radiation. The visible signal shall be actuated by radiation whenever the source is exposed or the machine is energized. The audible signal shall be actuated when an attempt is made to enter the installation while the source is exposed or the machine is energized. The alarm system shall be tested for proper operation with a radiation source each day before the installation is used for radiographic operations. The test shall include a check of both the visible and audible signals. ~~Entrance control devices that reduce the radiation level upon entry shall be tested monthly.~~

SECTION 31. DHS 157.53 (1) (a) 1. is amended to read:

DHS 157.53 Requirements for personnel safety. (1) (a) 1. ~~Completed a course recognized by the department, the NRC, another agreement state or a licensing state training~~ incorporating the subjects outlined in Appendix J and demonstrated an understanding of the subject matter by successful completion of a written examination.

SECTION 32. DHS 157.61 (10) (a) is amended to read:

DHS 157.61 (10) (a) An individual identified as a radiation safety officer, a teletherapy or authorized medical physicist, ~~an authorized medical physicist or a nuclear pharmacist on a department, NRC or another agreement state license, the permit issued by a licensee of broad scope or the permit issued by an NRC master material licensee before October 24, 2002~~ need not comply with the training requirements of subs. (7) to (9), respectively.

SECTION 33. DHS 157.61 (10) (b) is renumbered DHS 157.61 (10) (c).

SECTION 34. DHS 157.61 (10) (b) is created to read:

DHS 157.61 (10) (b) An individual identified as a Radiation Safety Officer, an authorized medical physicist, or an authorized nuclear pharmacist on a department, NRC or another agreement state license, the permit issued by a licensee of broad scope or the permit issued by NRC master material licensee between October 24, 2002 and April 29, 2005 need not comply with the training requirements of ss. DHS 157.61 (7), (8) or (9).

SECTION 35. DHS 157.62 (1) (b) is amended to read:

DHS 157.62 Technical requirements. (1) (b) A licensee shall calibrate the instrumentation required in par. (a) according to nationally recognized standards or the manufacturer's instructions.

SECTION 36. DHS 157.62 (3) (b) 2. c. is created to read:

DHS 157.62 (3) (b) 2. c. A PET radioactive drug producer licensed under s. DHS 157.13 (1) (j) or by NRC or another agreement state.

SECTION 37. DHS 157.62 (3) (c) 3. is amended to read:

DHS 157.62 (3) (c) 3. A combination of volumetric measurements and mathematical calculations, based on the measurement made by a manufacturer or preparer licensed under s. DHS 157.13 (4) (i), a PET radioactive drug producer licensed under s. DHS 157.13 (1) (j), or equivalent NRC or other agreement state requirements.

SECTION 38. DHS 157.63 (1) (a) is renumbered DHS 157.63 (1) (a) (intro.) and as renumbered is amended to read:

DHS 157.63 (1) (a) Is obtained from ~~a manufacturer or preparer licensed under s. DHS 157.13 (4) (i) or equivalent~~

~~NRC or other agreement state requirements.~~ either of the following:

SECTION 39. DHS 157.63 (1) (a) 1. and 2. are created to read:

DHS 157.63 (1) (a) 1. A manufacturer or preparer licensed under s. DHS 157.13 (4) (i), or equivalent NRC or other agreement state requirements.

2. A PET radioactive drug producer licensed under s. DHS 157.13 (1) (j), or equivalent NRC or other agreement state requirements.

SECTION 40. DHS 157.63 (1) (b) (intro.) is amended to read:

DHS 157.63 (1) (b) (intro.) Is prepared by, excluding production of PET radionuclides, any of the following:

SECTION 41. DHS 157.63 (2) (a) is renumbered DHS 157.63 (2) (a) (intro.) and as renumbered is amended to read:

DHS 157.63 (2) (a) Is obtained from ~~a manufacturer or preparer licensed under s. DHS 157.13 (4) (i) or equivalent NRC or agreement state requirements.~~ either of the following:

SECTION 42. DHS 157.63 (2) (a) 1. and 2. are created to read:

DHS 157.63 (2) (a) 1. A manufacturer or preparer licensed under s. DHS 157.13 (4) (i), or equivalent NRC or other agreement state requirements.

2. A PET radioactive drug producer licensed under s. DHS 157.13 (1) (j), or equivalent NRC or other agreement state requirements.

SECTION 43. DHS 157.63 (2) (b) intro., (3) (a) 1. to 3., (5) (a) 1. and (6) (a) are amended to read:

DHS 157.63 (2) (b) (intro.) Is prepared by, excluding production of PET radionuclides, any of the following:

(3) (a) 1. 0.15 kilobecquerel (~~0.15 microcurie~~) of molybdenum-99 per megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per 1 millicurie of technetium 99m).

2. 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per 1 millicurie of rubidium-82 chloride injection).

3. 0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-85 per 1 millicurie of rubidium-82 chloride injection).

(5) (a) 1. Complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for ~~uptake, dilution, and excretion~~ imaging and localization studies that includes the topics listed in par. (c) 1. and 2.

(6) WRITTEN ATTESTATION. (a) *Unsealed radioactive material for uptake, dilution, and excretion studies for which a written directive is not required.* A licensee shall require an authorized user of unsealed radioactive material for the uses authorized under sub. (1) to have obtained written attestation, signed by a preceptor authorized user who meets the requirements of subs. (4) ~~and~~ (5), s. DHS 157.64 (4), or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements of sub. (4) (a) 1. or (c) and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under sub. (1).

SECTION 44. DHS 157.64 (1) (a), (b) (intro.) and (5) (b) are amended to read:

DHS 157.64 (1) (a) Obtained from a manufacturer or preparer licensed under s. DHS 157.13 (4) (i), a PET radioactive drug producer licensed under s. DHS 157.13 (1) (j), or equivalent NRC or other agreement state requirements.

(b) Prepared Excluding production of PET radionuclides, is prepared by any of the following:

(5) (b) Is an authorized user under sub. (4) (a) ~~and~~ (b) for specified uses of I-131 listed in subs. (4) (b) 2. g., and (6), or equivalent agreement state requirements.

SECTION 45. DHS 157.67 (8) (b) 1. is amended to read:

DHS 157.67 (8) (b) 1. The output within 5% ~~of the source strength.~~

SECTION 46. DHS 157.68 (1) (intro.) and (2) (e) are amended to read:

DHS 157.68 Radioactive drugs for medical use. (1) PREPARATION. A licensee authorized to manufacture, prepare or transfer for commercial distribution or noncommercial transfer to medical use licensees in a consortium radioactive drugs shall ensure that any individual preparing the drugs is one of the following:

(2) (e) The state pharmacist licensure, no later than 30 days after the date that the licensee allows, under sub. (1) (c) 1. and 2., the individual to work as an authorized nuclear pharmacist.

SECTION 47. DHS 157.72 (1) (c) Note and (d) 3. Note are created to read:

DHS 157.72 (1) (c) Note: Submit report to the Department via telephone at (608) 267-4797 or via facsimile at (608) 267-3695.

(d) 3. Note: Submit written reports to the Department at: Department of Health Services, Radiation Protection Section, P.O. Box 2659, Madison WI 53701-2659.

SECTION 48. DHS 157.74 (2) (L) is created to read:

DHS 157.74 (2) (L) A registrant that uses two or more therapy devices for human use shall establish a radiation safety committee consisting of at least three members to oversee the use of all therapeutic radiation machines. The committee shall include an operator authorized by the registrant, a representative of the institution's management, and the radiation safety officer. If the institution has a radiation safety committee established under s. DHS 157.61(1)(e), this committee may be designated to oversee the use of all therapeutic radiation machines, if an operator authorized by the registrant is appointed to this committee.

SECTION 49. DHS 157.74 (3) (title) is amended to read:

DHS 157.74 (3) (title) X-RAY FILM IMAGE PROCESSING EQUIPMENT AND PROCESSING PROCEDURES.

SECTION 50. DHS 157.74 (3) (a) title is created to read:

DHS 157.74 (3) (a) *Film.*

SECTION 51. DHS 157.74 (3) (a) to (d) are renumbered DHS 157.74 (3) (a) 1., 2., 3. and 4.

SECTION 52. DHS 157.74 (3) (b) is created to read:

DHS 157.74 (3) (b) *Digital Imaging Systems.* 1. Each installation using a digital radiographic x-ray system for human diagnosis or screening shall have available suitable equipment for handling and processing the radiographic digital image according to the manufacturer's instructions.

2. Quality control and maintenance procedures shall be performed on a regular schedule according to the device manufacturer's recommendations. If analysis shows that the image quality has declined, corrective action shall be taken prior to performing patient examinations.

SECTION 53. DHS 157.76 (11), (12) and Note are created to read:

DHS 157.76 (11) EQUIPMENT OPERATIONS. (a) The facility shall ensure that only a licensed practitioner or a radiologic technologist who is trained in the safe use of fluoroscopic x-ray systems shall be allowed to operate these systems. All fluoroscopic x-ray images shall be viewed, directly or indirectly, and interpreted by a licensed practitioner.

(b). The use of fluoroscopic x-ray systems by radiologic technologists shall be performed under the supervision of a licensed practitioner for the purpose of localization to obtain images for diagnostic purposes.

(c) Radiologic technology students may not operate fluoroscopic x-ray systems except under the direct supervision of a licensed practitioner or radiologic technologist.

(d) Fluoroscopic x-ray systems may not be used as a positioning tool for general purpose radiographic examinations.

(e) The registrant shall require the operator of a fluoroscopic x-ray system to meet either of the following requirements:

1. Is certified by the American Board of Radiology or board eligible.

2. Has completed training to include but not limited to the following:

a. Principles and operation of the fluoroscopic x-ray system.

b. Biological effects of x-ray.

c. Principles of radiation protection.

d. Fluoroscopic outputs.

e. High level control options.

f. Dose reduction techniques for fluoroscopic x-ray systems.

g. Applicable state and federal regulations.

(12) AIR KERMA MEASUREMENTS. Annual measurements of both typical and maximum air kerma shall be made by a medical physicist or a person approved by a medical physicist.

Note: Materials should be placed in the useful beam to protect the imaging system when conducting these periodic measurements. Air kerma measurements do not include backscatter.

SECTION 54. DHS 157.77 (2) (g) is amended to read:

DHS 157.77 (2) (g) *Exposure control location.* The x-ray exposure control shall be placed so that the operator may view the patient while making any exposure and at least ~~3-feet~~ 1 meter (3.3 feet) from the end of the protective barrier.

SECTION 55. DHS 157.79 (2) (c) is amended to read:

DHS 157.79 (2) (c) A ~~deadman~~ ~~dead-man~~ type of exposure switch shall be provided with an electrical cord of sufficient length so that the operator or the assistant, may stand out of the useful beam and at least 2 meters (6.5 feet) from the table during all x-ray exposures. A foot operated exposure switch may be used and this switch may be integrated into the table base or the foot switch may be on a 2 meter (6.5 feet) cord.

SECTION 56. DHS 157.80 (2) (a) is renumbered DHS 157.80 (2) (a) 1. and 3. and amended to read:

DHS 157.80 (2) OPERATING PROCEDURES. (a) 1. A CT x-ray system for human use may only be operated for diagnostic procedures by an American registry of radiologic

technologists certified person who has been specifically trained in its operation.

3. Combination systems which are designated as PET/CT shall be operated by a person qualified by training in the safe use of radioactive materials and who meets the training requirements of Appendix L.

SECTION 57. DHS 157.80 (2) (a) 2. is created to read:

DHS 157.80 (2) (a) 2. A CT x-ray system for veterinary use may only be operated for diagnostic procedures by a person who is certified by the American registry of radiological technologists or has completed training equivalent to the requirements of Appendix L and has been specifically trained in its operation.

SECTION 58. DHS 157.81 (1) and (2) are amended to read:

DHS 157.81 Shielding plan review. (1) PLAN REVIEW AND APPROVAL. Prior to construction, the floor plans, shielding specifications and equipment arrangement of all new installations, or modifications of existing installations, utilizing ionizing radiation machines, including dental CT and dental cephalometric machines, shall be submitted to the department for review and approval.

(2) EXEMPTIONS. Dental intraoral and panoramic, mammography, and bone density devices are exempt from this section.

SECTION 59. DHS 157.81 (3) (c) 7. is created to read:

DHS 157.81 (3) (c) 7. The x-ray exposure control shall be located within the shielded area and at least 1 meter (3.3 feet) from the open end of the protective barrier, excluding mammography units.

SECTION 60. DHS 157.82 (2) (c) and (5) (c) are created to read:

DHS 157.82 (2) (c) A registrant for electronic brachytherapy shall require the authorized user to complete device specific instruction from the manufacturer or individual trained by the manufacturer, and training on procedures required by s. DHS 157.85(16)(g) 4. and 5.

(5) (c) A person who will be operating an electronic brachytherapy unit shall complete device specific instruction from the manufacturer or individual trained by the manufacturer, and training on procedures required by s. DHS 157.85 (16) (g) 4. and 5.

SECTION 61. DHS 157.82 (6) is amended to read:

DHS 157.82 (6) SAFETY PROCEDURES. Written safety procedures and rules, including any restrictions required for the safe operation of the particular therapeutic radiation machine, shall be developed by a medical physicist and shall be available in the control area of a therapeutic radiation machine. The operator shall be able to demonstrate familiarity with these rules. Operators, authorized users and medical physicists for electronic brachytherapy shall participate in drills of the emergency procedures, required by s. DHS 157.85(16)(g) 5., initially and at least annually thereafter.

SECTION 62. DHS 157.83 (1) (a) and (c) are amended to read:

DHS 157.83 (1) (a) Prior to administration, a written directive is prepared for any external beam radiation therapy dose or electronic brachytherapy dose. A written revision to an existing written directive may be made prior to beginning treatment, or prior to delivery of a fractional dose, provided that the revision is dated and signed by an authorized user prior to administration of the external beam radiation therapy dose, or the next external beam radiation therapy fractional dose. If, because of the patient's condition, a delay to provide

a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive shall be acceptable provided that the oral revision is documented immediately in the patient's record and a revised written directive is signed by an authorized user within 24 hours of the oral revision.

(c) External beam radiation therapy or electronic brachytherapy final plans of treatment and related calculations are according to the respective written directives.

SECTION 63. DHS 157.85 (13) (em) is created to read:

DHS 157.85 (13) (em) Full calibration for electronic brachytherapy units shall include all of the following:

1. Timer accuracy and linearity over the typical range of use.
2. Proper operation of back-up exposure control devices.
3. The output within 2 % of the expected value, if applicable, or determination of the output if there is no expected value.
4. Evaluation that the relative dose distribution about the source is within 5 % of the expected value.
5. Source position accuracy to within 1 millimeter within the applicator.
6. Determination of the proper length of source transfer tubes and applicators.
7. Determination of the operability of the source transfer tubes, applicators and transfer tube-applicator interfaces.

SECTION 64. DHS 157.85 (14) (e) is amended to read:

DHS 157.85 (14) (e) A registrant shall have the medical physicist review and sign the results of each radiation output quality control check and notify the registrant of results within 10 working days of the date that the check was performed.

SECTION 65. DHS 157.85 (14) (fm) is created to read:

DHS 157.85 (14) (fm) If the results of the quality control checks indicate malfunction of any system, the registrant shall prevent clinical use of the system until repaired.

SECTION 66. DHS 157.85 (14) (g) 4. is amended to read:

DHS 157.85 (14) (g) 4. Viewing and intercom systems, if applicable.

SECTION 67. DHS 157.85 (14) (g) 6. and (gm) are created to read:

DHS 157.85 (14) (g) 6. If applicable, the integrity of all cables, catheters or parts of the device that carry high voltages.

(gm) Daily quality control checks for electronic brachytherapy shall include all the following:

1. The output of the x-ray source falls within 3 % of expected values, which includes output as a function of time or output as a function of setting on a monitor chamber.
2. Verification of the consistency of the dose distribution to within 3 % of that found during calibration.
3. Validation of the operation of positioning methods to assure that the treatment dose exposes the intended location to within 1 mm.
4. Inspection of all treatment components on the day of use.

SECTION 68. DHS 157.85 (16) (g) is created to read:

DHS 157.85 (16) (g) A registrant for electronic brachytherapy shall do all of the following:

1. Ensure the electronic brachytherapy unit is inoperable, either by hardware or password, when unattended by qualified staff or service personnel.
2. Secure the unit, console, console keys and the treatment room when unattended or not in use.

3. Prevent dual operation of more than one radiation producing device in a treatment room, if applicable.

4. Create a written procedure for safe operation of each device.

5. Develop, implement and maintain written procedures for responding to an abnormal situation. The procedure shall include all the following:

a. Instructions for responding to equipment failures and the names of the persons responsible for implementing corrective actions.

b. The names and telephone numbers of the licensed practitioner, the medical physicist, the radiation safety officer and the manufacturer to be contacted if the unit or console operates abnormally.

6. Maintain a copy of the procedures required by subd. 4. and 5. at the unit console.

7. Ensure all of the following is done during treatment:

a. Only individuals approved by the authorized user, radiation safety officer or medical physicist may be present in the treatment room.

b. Protective shielding shall be available for persons in the treatment room.

c. A radiation survey is performed when the unit and/or shielding is portable to verify proper shielding placement immediately upon initiation of treatment.

d. A medical physicist and operator shall be physically present during the initiation and course of patient treatment.

e. A medical physicist or operator shall monitor the position of all persons in the treatment room to prevent unshielded exposure.

f. A medical physicist or operator shall monitor all entrances to prevent entering individuals from unshielded exposure.

g. Only mechanical supporting or restraining devices may

be used to hold a patient in position, when applicable.

SECTION 69. DHS 157.88 (3) (a) (intro.) is amended to read:

DHS 157.88 (3) (intro.) NOTIFICATIONS AND REPORTS TO INDIVIDUALS. (a) *Radiation exposure reports.* Every 12 months, a licensee or registrant shall provide a written report of radiation exposure to each employee who is required to be monitored for radiation exposure under s. DHS 157.25 (2) if the employee's annual dose exceeds 1 mSv (100 mrem) TEDE or 1 mSv (100 mrem) to any individual organ or tissue. The report shall include all of the following:

SECTION 70. DHS 157.92 (2) (c) 5. (intro.) and (3) (a) (intro.) and (b) are amended to read:

DHS 157.92 (2) (c) 5. (intro.) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of two percent by ~~weight~~mass, provided that all the following conditions apply:

(3) TRANSPORT OF LICENSED MATERIAL. (a) A licensee who transports licensed material outside the site of usage, as specified in the department license, or on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR 107, 171 to 180, and 390 to 397, appropriate to the mode of transport and do all the following:

(b) If the regulations of the U.S. department of transportation are not applicable to a shipment of licensed material, a licensee shall comply with the requirements of 49 CFR ~~470 to 489~~107, 171 to 180, and 390 to 397, appropriate to the mode of transport as if the shipment was subject to the regulations. A request for modification, waiver or exemption from these requirements and any notification referred to in these requirements shall be submitted in writing to the department.

SECTION 71. APPENDIX E, List of Elements (page 439) is amended to read:

List of Elements			List of Elements (cont.)		
Name	Symbol	Atomic Number	Name	Symbol	Atomic Number
Actinium	Ac	89	Mercury	Hg	80
Aluminum	Al	13	Molybdenum	Mo	42
Americium	Am	95	Neodymium	Nd	60
Antimony	Sb	51	Neptunium	Np	93
Argon	Ar	18	Nickel	Ni	28
Arsenic	As	33	Niobium	Nb	41
Astatine	At	85	<u>Nitrogen</u>	<u>N</u>	<u>7</u>
Barium	Ba	56	Osmium	Os	76
Berkelium	Bk	97	<u>Oxygen</u>	<u>O</u>	<u>8</u>
Beryllium	Be	4	Palladium	Pd	46
Bismuth	Bi	83	Phosphorus	P	15
Bromine	Br	35	Platinum	Pt	78
Cadmium	Cd	48	Plutonium	Pu	94
Calcium	Ca	20	Polonium	Po	84
Californium	Cf	98	Potassium	K	19
Carbon	C	6	Praseodymium	Pr	59
Cerium	Ce	58	Promethium	Pm	61
Cesium	Cs	55	Protactinium	Pa	91
Chlorine	Cl	17	Radium	Ra	88
Chromium	Cr	24	Radon	Rn	86
Cobalt	Co	27	Rhenium	Re	75
Copper	Cu	29	Rhodium	Rh	45
Curium	Cm	96	Rubidium	Rb	37
Dysprosium	Dy	66	Ruthenium	Ru	44
Einsteinium	Es	99	Samarium	Sm	62
Erbium	Er	68	Scandium	Sc	21
Europium	Eu	63	Selenium	Se	34
Fermium	Fm	100	Silicon	Si	14
Fluorine	F	9	Silver	Ag	47
Francium	Fr	87	Sodium	Na	11
Gadolinium	Gd	64	Strontium	Sr	38
Gallium	Ga	31	Sulfur	S	16
Germanium	Ge	32	Tantalum	Ta	73
Gold	Au	79	Technetium	Tc	43
Hafnium	Hf	72	Tellurium	Te	52
Holmium	Ho	67	Terbium	Tb	65
Hydrogen	H	1	Thallium	Tl	81
Indium	In	49	Thorium	Th	90
Iodine	I	53	Thulium	Tm	69
Iridium	Ir	77	Tin	Sn	50
Iron	Fe	26	Titanium	Ti	22
Krypton	Kr	36	Tungsten	W	74
Lanthanum	La	57	Uranium	U	92
Lead	Pb	82	Vanadium	V	23
Lutetium	Lu	71	Xenon	Xe	54
Magnesium	Mg	12	Ytterbium	Yb	70
Manganese	Mn	25	Yttrium	Y	39
Mendelevium	Md	101	Zinc	Zn	30

SECTION 72. APPENDIX O, s. II is amended to read:

II. a. For individual radionuclides whose identities are known, but which are not listed in TABLE VI, the determination of the values of A₁ and A₂ requires department approval, except that the values of A₁ and A₂ in TABLE ~~VH~~VIII may be used without obtaining department approval.

b. For individual radionuclides whose identities are known, but which are not listed in Table VII, the exempt material activity concentration and exempt consignment activity values contained in Table VIII may be used. Otherwise, the licensee shall obtain prior department approval of the exempt material activity concentration and exempt consignment activity values for radionuclides not listed in Table VII, before shipping the material.

c. The licensee shall submit requests for prior approval, described under paragraphs II(a) and II(b) of this Appendix, in writing to the department.

SECTION 73. APPENDIX O, s. IV, par. (a) is amended to read:

(a) For special form radioactive material, the maximum quantity transported in a Type A package is as follows:

$$\sum_i \frac{B(i)}{A_1(i)} \leq 1$$

where B(i) is the activity of radionuclide i and A₁(i) is the A₁ value for radionuclide i.

SECTION 74. APPENDIX O, s. IV, par. (b) is renumbered and amended to read:

(b) For normal form radioactive material, the maximum quantity transported in a Type A package is as follows:

$$\sum_i \frac{B(i)}{A_2(i)} \leq 1$$

where B(i) is the activity of radionuclide i and ~~A₁(i) and A₂(i) are the A₁ and A₂ is the values value~~ A₁ and A₂ is the values value for radionuclide respectively i.

(c) Alternatively, ~~an~~ the A₁ value for mixtures of special form material may be determined as follows:

$$A_1 \text{ for mixtures} = \frac{1}{\sum_i \frac{f(i)}{A_1(i)}}$$

where f(i) is the fraction of activity of nuclide-I (i) in the mixture and A₁(i) is the appropriate A₁ value for nuclide i.

(d) ~~An~~ Alternatively the A₂ value for mixtures of normal form material may be determined as follows:

$$A_2 \text{ for mixtures} = \frac{1}{\sum_i \frac{f(i)}{A_2(i)}}$$

where f(i) is the fraction of activity of ~~nuclide-I for radionuclide (i)~~ radionuclide (i) in the mixture, and A₂ (i) is the appropriate A₂ value for ~~nuclide radionuclide (i)~~ radionuclide (i).

SECTION 75. APPENDIX O s. IV pars. (e) and (f) are created to read:

(e) The exempt activity concentration for mixtures of nuclides may be determined as follows:

$$\text{Exempt activity concentration for mixture} = \frac{1}{\sum_i \frac{f(i)}{[A](i)}}$$

where f(i) is the fraction of activity concentration of radionuclide (i) in the mixture, and [A] is the activity concentration for exempt material containing radionuclide (i).

(f) The activity limit for an exempt consignment for mixtures of radionuclides may be determined as follows:

$$\text{Exempt consignment activity limit for mixture} = \frac{1}{\sum_i \frac{f(i)}{A(i)}}$$

where f(i) is the fraction of activity of radionuclide (i) in the mixture, and A is the activity limit for exempt consignments for radionuclide (i).

SECTION 76. APPENDIX O, TABLE VII (page 534) is amended to read:

TABLE VII
EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND
EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ac-225 (a)	Actinium (89)	1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
Ac-227 (a)		1.0×10^{-1}	2.7×10^{-12}	1.0×10^3	2.7×10^{-8}
Ac-228		1.0×10^1	2.7×10^{-10}	1.0×10^6	2.7×10^{-5}
Ag-105	Silver (47)	1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Ag-108m (a)		1.0×10^1	2.7×10^{-10}	1.0×10^6	2.7×10^{-5}
Ag-110m (a)		1.0×10^1	2.7×10^{-10}	1.0×10^6	2.7×10^{-5}
Ag-111		1.0×10^3	2.7×10^{-8}	1.0×10^6	2.7×10^{-5}
Al-26	Aluminum (13)	1.0×10^1	2.7×10^{-10}	1.0×10^5	2.7×10^{-6}
Am-241	Americium (95)	1.0	2.7×10^{-11}	1.0×10^4	2.7×10^{-7}
Am-242m (a)		1.0	2.7×10^{-11}	1.0×10^4	2.7×10^{-7}
Am-243 (a)		1.0	2.7×10^{-11}	1.0×10^3	2.7×10^{-8}
Ar-37	Argon (18)	1.0×10^6	2.7×10^{-5}	1.0×10^8	2.7×10^{-3}
Ar-39		1.0×10^7	2.7×10^{-4}	1.0×10^4	2.7×10^{-7}
Ar-41		1.0×10^2	2.7×10^{-9}	1.0×10^9	2.7×10^{-2}
As-72	Arsenic (33)	1.0×10^1	2.7×10^{-10}	1.0×10^5	2.7×10^{-6}
As-73		1.0×10^3	2.7×10^{-8}	1.0×10^7	2.7×10^{-4}
As-74		1.0×10^1	2.7×10^{-10}	1.0×10^6	2.7×10^{-5}
As-76		1.0×10^2	2.7×10^{-9}	1.0×10^5	2.7×10^{-6}
As-77		1.0×10^3	2.7×10^{-8}	1.0×10^6	2.7×10^{-5}
At-211 (a)	Astatine (85)	1.0×10^3	2.7×10^{-8}	1.0×10^7	2.7×10^{-4}
Au-193	Gold (79)	1.0×10^2	2.7×10^{-9}	1.0×10^7	2.7×10^{-4}
Au-194		1.0×10^1	2.7×10^{-10}	1.0×10^6	2.7×10^{-5}
Au-195		1.0×10^2	2.7×10^{-9}	1.0×10^7	2.7×10^{-4}
Au-198		1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Au-199		1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
<u>Be-7</u>	<u>Beryllium (4)</u>	<u>1.0×10^3</u>	<u>2.7×10^{-8}</u>	<u>1.0×10^7</u>	<u>2.7×10^{-4}</u>
<u>Be-10</u>		<u>1.0×10^4</u>	<u>2.7×10^{-7}</u>	<u>1.0×10^6</u>	<u>2.7×10^{-5}</u>
<u>Bi-205</u>	<u>Bismuth (83)</u>	<u>1.0×10^1</u>	<u>2.7×10^{-10}</u>	<u>1.0×10^6</u>	<u>2.7×10^{-5}</u>
<u>Bi-206</u>		<u>1.0×10^1</u>	<u>2.7×10^{-10}</u>	<u>1.0×10^5</u>	<u>2.7×10^{-6}</u>
<u>Bi-207</u>		<u>1.0×10^1</u>	<u>2.7×10^{-10}</u>	<u>1.0×10^6</u>	<u>2.7×10^{-5}</u>
<u>Bi-210</u>		<u>1.0×10^3</u>	<u>2.7×10^{-8}</u>	<u>1.0×10^6</u>	<u>2.7×10^{-5}</u>
<u>Bi-210m</u>		<u>1.0×10^1</u>	<u>2.7×10^{-10}</u>	<u>1.0×10^5</u>	<u>2.7×10^{-6}</u>
Ba-131 (a)	Barium (56)	1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Ba-133		1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Ba-133m		1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Ba-140 (a)		1.0×10^1	2.7×10^{-10}	1.0×10^5	2.7×10^{-6}

SECTION 77. APPENDIX O, TABLE IX (page 547) is amended to read:

**Table IX
Activity–Mass Relationships For Uranium**

Uranium Enrichment* wt % U-235 present	Specific Activity	
	TBq/g	Ci/g
0.45	1.9 x 10 ⁻⁸	5.4 5.0 x 10 ⁻⁷
0.72	2.6 x 10 ⁻⁸	7.1 x 10 ⁻⁷
1	2.8 x 10 ⁻⁸	7.6 x 10 ⁻⁷
1.5	3.7 x 10 ⁻⁸	1.0 x 10 ⁻⁶
5	1.0 x 10 ⁻⁷	2.7 x 10 ⁻⁶
10	1.8 x 10 ⁻⁷	4.8 x 10 ⁻⁶
20	3.7 x 10 ⁻⁷	1.0 x 10 ⁻⁵
35	7.4 x 10 ⁻⁷	2.0 x 10 ⁻⁵
50	9.3 x 10 ⁻⁷	2.5 x 10 ⁻⁵
90	2.1 x 10 ⁻⁶	5.8 x 10 ⁻⁵
93	2.6 x 10 ⁻⁶	7.0 x 10 ⁻⁵
95	3.4 x 10 ⁻⁶	9.1 x 10 ⁻⁵
Natural thorium	8.1 x 10 ⁻⁹	2.2 x 10 ⁻⁷

SECTION 78. APPENDIX P is amended to read:

Quantities of Radioactive Materials Requiring Consideration of the Need for a Contingency Plan for Responding to a Release

Radioactive Material ^{1/} Release Fraction	Quantity (GBq)		Quantity (Ci)
Actinium–228 4,000	0.001		148,000
Americium–241 2		0.001	74
Americium–242 2		0.001	74
Americium–243 2		0.001	74
Antimony–124	0.01	148,000	4,000
Antimony–126	0.01	222,000	6,000
Barium–133	0.01	370,000	10,000
Barium–140	0.01	1,110,000	30,000
Bismuth–207	0.01	185,000	5,000
Bismuth–210	0.01	22,200	600
Cadmium–109	0.01	37,000	1,000
Cadmium–113	0.01	2,960	80
Calcium–45	0.01	740,000	20,000
Californium–252 9 (20 mg)		0.001	333
Carbon–14 (Non-CO ₂) 1,850,000	50,000		0.01
Cerium–141	0.01	370,000	10,000
Cerium–144	0.01	11,100	300
Cesium–134	0.01	74,000	2,000
Cesium–137	0.01	111,000	3,000
Chlorine–36	0.5	3,700	100

Radioactive Material ^{1/} Release Fraction	Quantity (GBq)		Quantity (Ci)
Chromium–51	0.01	11,100,000	300,000
Cobalt–60 5,000	0.001		185,000
Copper–64	0.01	7,400,000	200,000
Curium–242 60	0.001		2,220
Curium–243 3	0.001		110
Curium–244 4	0.001		148
Curium–245 2	0.001		74
Europium–152	0.01	18,500	500
Europium–154	0.01	14,800	400
Europium–155	0.01	111,000	3,000
Gadolinium–153 5,000		0.01	185,000
Germanium–68 2,000		0.01	74,000
Gold–198	0.01	1,110,000	30,000
Hafnium–172	0.01	14,800	400
Hafnium–181	0.01	259,000	7,000
Holmium–166m. 100		0.01	3,700
Hydrogen–3	0.5	740,000	20,000
Indium–114m.	0.01	37,000	1,000
Iodine–125.	0.5	370	10
Iodine–131	0.5	370	10
Iridium–192 40,000	0.001		1,480,000
Iron–55	0.01	1,480,000	40,000
Iron–59	0.01	259,000	7,000
Krypton–85	1.0	222,000,000	6,000,000
Lead–210	0.01	296	8
Manganese–56	0.01	2,220,000	60,000
Mercury–203	0.01	370,000	10,000
Molybdenum–99 30,000		0.01	1,110,000
Neptunium–237 2		0.001	74
Nickel–63	0.01	740,000	20,000
Niobium–94	0.01	11,100	300
Phosphorus–32 100		0.5	3,700
Phosphorus–33 1,000		0.5	37,000
Polonium–210	0.01	370	10
Potassium–42	0.01	333,000	9,000
Promethium–145 4,000		0.01	148,000
Promethium–147 4,000		0.01	148,000
Radium–226 100	0.001		3,700
Ruthenium–106 200		0.01	7,400
Samarium–151	0.01	148,000	,000
Scandium–46	0.01	111,000	3,000
Selenium–75	0.01	370,000	10,000
Silver–110m.	0.01	37,000	1,000

Radioactive Material ^{1/} Release Fraction	Quantity (GBq)		Quantity (Ci)
Sodium-22	0.01	333,000	9,000
Sodium-24	0.01	370,000	10,000
Strontium-89	0.01	111,000	3,000
Strontium-90	0.01	3,330	90
Sulfur-35	0.5	33,30	900
Technetium-99 10,000		0.01	370,000
Technetium-99m 400,000		0.01	14,800,000
Tellurium-127m 5,000		0.01	185,000
Tellurium-129m 5,000		0.01	185,000
Terbium-160	0.01	148,000	4,000
Thulium-170	0.01	148,000	4,000
Tin-113	0.01	70,000	10,000
Tin-123	0.01	111,000	3,000
Tin-126	0.01	37,000	1,000
Titanium-44	0.01	3,700	100
Vanadium-48	0.01	259,000	7,000
Xenon-133	1.0	33,300,000	900,000
Yttrium-91	0.01	74,000	2,000
Zinc-65	0.01	185,000	5,000
Zirconium-93	0.01	14,800	400
Zirconium-95	0.01	185,000	5,000
Any other beta-gamma emitter 370,000	10,000		0.01

Radioactive Material ^{1/} Release Fraction	Quantity (GBq)		Quantity (Ci)
Mixed fission products 37,000	1,000		0.01
Mixed corrosion prod- ucts 370,000	10,000		0.01
Contaminated equip- ment, beta-gamma 370,000.	10,000		0.001
Irradiated material, any form other than solid noncombustible 37,000	1,000		0.01
Irradiated material, solid noncombustible 370,000	10,000		0.001
Mixed radioactive waste, beta-gamma 37,000	1,000		0.01
Packaged mixed waste, ^{2/} beta-gamma 370,000	10,000		0.001
Any other alpha emitter 74	2		0.001
Contaminated equip- ment, alpha 740.	20		0.0001
Packaged waste, alpha ^{2/} 740	20		0.0001

^{1/} For combinations of radioactive materials, the licensee is required to consider whether an emergency plan is needed if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material above exceeds one.

^{2/} Waste packaged in Type B containers does not require an emergency plan.

SECTION 79. DHS 157 APPENDIX T is created to read:

CHAPTER DHS 157
APPENDIX T
NATIONALLY TRACKED SOURCE THRESHOLDS

The Terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only and are rounded after conversion.

Radioactive material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Actinium-227	20	540	0.2	5.4
Americium-241	60	1,600	0.6	16
Americium-241/Be	60	1,600	0.6	16
Californium-252	20	540	0.2	5.4
Cobalt-60	30	810	0.3	8.1
Curium-244	50	1,400	0.5	14
Cesium-137	100	2,700	1	27
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,200	0.8	22
Plutonium-238	60	1,600	0.6	16
Plutonium-239/Be	60	1,600	0.6	16
Polonium-210	60	1,600	0.6	16
Promethium-147	40,000	1,100,000	400	11,000
Radium-226	40	1,100	0.4	11
Selenium-75	200	5,400	2	54
Strontium-90	1,000	27,000	10	270
Thorium-228	20	540	0.2	5.4
Thorium-229	20	540	0.2	5.4
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81

Notice of Hearings

Revenue

EmR0912 and CR 09-064

NOTICE IS HEREBY GIVEN That pursuant to ss. 125.03 (1) (b) and 125.545 (6) (b), Stats., the Department of Revenue will hold public hearings to consider emergency rules and the creation of permanent rules revising Chapter Tax 2, relating to combined reporting for corporation franchise and income tax purposes.

This proposed rule order will:

- Reflect the changes in Wisconsin's franchise and income tax laws affected by 2009 Act 2, and
- Provide guidance to taxpayers and Department employees so they can properly apply the Wisconsin franchise and income tax laws.

Hearing Information

The hearings will be held:

<u>Date and Time:</u>	<u>Location:</u>
September 25, 2009 at 9:00 a.m.	Events Room State Revenue Building 2135 Rimrock Road Madison, Wisconsin
October 16, 2009 at 9:00 a.m.	Events Room State Revenue Building 2135 Rimrock Road Madison, Wisconsin

Copies of Proposed Rules

A copy of the full text of the proposed rule order and the full fiscal estimate may be obtained at no cost by contacting the department. See *Agency Contact Person* listed below.

Submission of Written Comments

Interested persons are invited to appear at the hearings and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearings. Written comments may also be submitted to the *Agency Contact Person* listed below no later than October 16, 2009, and will be given the same consideration as testimony presented at the hearing.

Agency Contact Person

Wendy Miller
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933
Telephone: (608) 266-7177
E-mail: wendy.miller@revenue.wi.gov

Analysis Prepared by the Department of Revenue:

Statute interpreted

Section 71.255, Stats.

Statutory authority

General rulemaking authority in s. 227.24, Stats.; specific rulemaking authority granted in s. 71.255, Stats., as follows:

- Section 71.255 (6) (b) 2. and (c) 2., Stats., relating to net business loss carryforwards, credits, and credit carryforwards.

- Section 71.255 (7) (a), Stats., relating to identifying the designated agent.
- Section 71.255 (11), relating to the adoption of federal treasury regulations so that transactions among combined group members are treated consistently with transactions among federal consolidated group members.

Related statute or rule

Sections 71.24 (1), (1m), and (7), 71.29, 71.44 (1), (1m), and (3), 71.77, 71.82, 71.83, and 71.84, Stats.

Plain language analysis

This rule creates eight new rule sections. The purpose of each rule section is provided below:

Section Tax 2.60 Definitions Relating to Combined Reporting.

Provides definitions relating to the other rule sections created by this rule order. Those other sections are ss. Tax 2.61, 2.62, 2.63, 2.64, 2.65, 2.66, and 2.67.

Section Tax 2.61 Combined Reporting.

- Explains who must use combined reporting.
- Provides rules for determining whether a corporation is a member of a "commonly controlled group."
- Explains when a corporation's income is not subject to combination because of the degree of the corporation's activity outside the U.S. ("water's edge" rules).
- Explains how to compute the combined group's combined unitary income, including the applicability of federal regulations that relate to consolidated groups. The following components of the computation are covered:
 - Intercompany transactions
 - Capital gains and losses
 - Charitable contributions
 - Dividends
 - Stock basis adjustments
 - Earnings and profits
 - Allocation of expenses and deductions
- Explains how to apportion the combined unitary income and rules that apply to various aspects of the apportionment computation.
- Provides rules for determining the taxable income of combined groups that are not subject to apportionment.
- Describes how to apply net business loss carryforwards, including rules relating to the sharing of net business losses.
- Describes how to apply credits, including rules relating to the sharing of research credits.

Section Tax 2.62 Unitary Business.

- Explains the concept of a "unitary business" and its relationship to the concept of a "combined group."
- Enumerates several characteristics that are indicators of a "unitary business."
- Lists some key U.S. Supreme Court cases which provide further guidance on the extent to which a business enterprise is considered a "unitary business" under the U.S. Constitution. This is significant because the statute provides that "unitary business" shall be construed to the broadest extent permitted by the U.S. Constitution.
- Provides several presumptions to aid taxpayers in determining whether a unitary business exists.

- Provides specific rules relating to the inclusion of passive holding companies and pass-through entities in the unitary business.

Section Tax 2.63 Controlled Group Election.

- Explains how to make the election and how to renew it after its 10-year duration.
- Provides rules relating to the department's authority to disregard the election in cases where it has the primary effect of tax avoidance rather than its intended purpose of simplifying the determination of who must be included in the combined report.

Section Tax 2.64 Alternative Apportionment for Combined Groups Including Specialized Industries.

- Specifies how and when a qualifying group may file a petition for alternative apportionment and what information must be submitted to the department.
- Provides that once the department approves the alternative method, that same method must be used for a 7-year period, subject to a limitation that the tax computation under the alternative method cannot be lower than what it would have been if each corporation apportioned its income separately.

Section Tax 2.65 Designated Agent of Combined Group.

- Explains how to identify which corporation is responsible to act on behalf of the combined group for matters relating to the combined return.
- Defines the scope and limitations of the agency relationship.

Section Tax 2.66 Combined Estimated Tax Payments.

- Explains when a combined group member may make its own estimated payments, rather than having the designated agent make the payments on its behalf.
- Provides rules for determining the combined group's required estimated tax payments.
- Provides rules for applying estimated payments and overpayments of prior year estimated payments.

Section Tax 2.67 Combined Returns.

- Enumerates the required components of a combined return and explains how to report separate entity items.
- Explains how to determine the taxable year of a combined return.
- Provides rules relating to interest, penalties, and statutes of limitations as they relate to combined returns.

Comparison with federal regulations

The rules are very similar to the federal regulations relating to consolidated groups. The federal regulations listed below are specifically referenced or adopted in this rule order, but modified to apply to combined groups instead of federal consolidated groups.

- Treas. Reg. §1.1502-13, relating to intercompany transactions. This federal regulation was actually adopted by statute (s. 71.255 (4) (g), Stats.), but is interpreted in this rule order (s. Tax 2.61 (6) (b)).
- Treas. Regs. §1.1502-22 and 1.1502-23, relating to capital gains and losses and section 1231 gains and losses (s. Tax 2.61 (6) (c)).
- Treas. Reg. §1.1502-24, relating to charitable contributions (s. Tax 2.61 (6) (d)).

- Treas. Reg. §1.1502-32, relating to investment (stock basis) adjustments (s. Tax 2.61 (6) (f)).
- Treas. Reg. §1.1502-33, relating to earnings and profits (s. Tax 2.61 (6) (g)).

The general purpose of the above federal regulations is to treat the members of a federal consolidated group as if they were divisions of a single corporation. Likewise, the purpose of adopting these rules for Wisconsin purposes is to treat the members of a combined group as if they were divisions of a single corporation.

Comparison with rules in adjacent states

Illinois

Illinois has comprehensive regulations relating to its combined reporting statute. (including IL Regs. 100.2340, 100.2570, 100.5200, 100.5201, 100.5210, 100.5220, 100.5230, 100.5240, 100.5250, 100.5260, 100.5265, 100.5280, and 100.9700). The following aspects of the rules in this rule order were modeled after the Illinois regulations, with some modifications:

- Adoption of federal consolidated return regulations
- Combined estimated tax payments
- Rules relating to the duties of the designated agent

Iowa

Iowa does not have a statute which permits or allows combined reporting. Thus, it has no rules or regulations relating to combined reporting.

Michigan

Michigan adopted combined reporting in 2008, when it enacted its Michigan Business Tax. At the time this rule order was authored, Michigan has not yet promulgated rules or regulations relating to its combined reporting statute. However, Michigan has published an extensive amount of guidance in the form of Frequently Asked Questions.

Minnesota

Like Illinois, Minnesota has rules relating to its combined reporting statute (including Rules 8019.0100, 8019.0300, 8019.0405, and 8019.0500, Minn. Rules). The section of this rule order that provides guidance in determining a "unitary business" (s. Tax 2.62) is modeled after Minnesota's rule 8019.0100, with some modifications.

Summary of factual data and analytical methodologies

The department developed these regulations based upon research of the combined reporting laws, rules, regulations, published guidance, and tax form instructions of other states. The Illinois and Minnesota regulations referenced above were frequently used as a resource, in addition to various law journal articles and tax publications.

The combined reporting regulations recently promulgated by Massachusetts (830 CMR 63.32B.2) were heavily relied upon. The Massachusetts combined reporting law (M.G.L. c. 63 §32B), like Wisconsin's, is first effective for taxable years beginning on or after January 1, 2009, and Wisconsin's law has many similarities with the Massachusetts law.

The department also studied the regulations under section 1502 of the Internal Revenue Code, relating to consolidated returns.

Analysis and supporting documents used to determine effect on small business

Combined reporting primarily affects larger corporations, rather than small businesses. Combined reporting is required for regular "C" corporations, but is not required for the types of entities that are more characteristic of small businesses, such as:

- Sole proprietorships,
- Partnerships,
- Limited liability companies taxed as partnerships, and
- S corporations

Anticipated costs incurred by private sector

This proposed rule does not have a significant fiscal effect on the private sector independently from the statute it interprets.

Small Business Impact

This proposed rule does not have a significant effect on small business.

Fiscal Estimate

The proposed rules create Tax 2.60 through 2.67 to incorporate tax law changes included in 2009 Act 2 and 2009 Act 28 related to combined reporting for commonly controlled groups of corporations.

The fiscal effect from implementation of combined reporting was included in the fiscal effect for Act 2, and the fiscal effect of certain changes to combined reporting that were a part of Act 28 were included in the fiscal effect for the Act. Therefore, the proposed rules have no fiscal effect.

**Notice of Rulemaking
(under s. 227.16 (2) (b), Stats.)**

**Wisconsin Technical College System Board
CR 09-066**

The Wisconsin Technical College System Board proposes an order to revise section TCS 10.03 (3), relating to statutory residents. Public hearing and notice are not required under s. 227.16 (2) (b), Stats., as the proposed rule amendment brings the existing rule into conformity with s. 38.22 (6), Stats.

Analysis Prepared by the Wisconsin Technical College System Board

Statutes interpreted

Section 38.22 (6), Stats.

Statutory authority

Sections 15.64, 38.22 (4) and (6), Stats.

Explanation of agency authority

Pursuant to s. 38.22 (4), Stats., the Technical College System Board shall establish procedures to determine the residence of students attending district schools.

Related statute or rule

2009 Wisconsin Act 28 and s. 38.22 (6), Stats.

Plain language analysis

The 2009-11 state budget bill, 2009 Wisconsin Act 28, added new state residency provisions for tuition purposes for persons who are not residents of the state, but who are enrolled

in a technical college district and who meet three eligibility requirements: they graduated from a Wisconsin high school or received a Wisconsin HSED; they have been continuously present in the state for the three years following their enrollment in a Wisconsin high school or preceding receipt of a Wisconsin HSED; and upon enrollment in a technical college, they demonstrate proof of filing (or intent to file) for a permanent U.S. resident visa as soon as they are eligible. In addition, previous legislation added s. 38.22 (6) (f) relating to the residency status for tuition purposes for certain veterans, which was never codified into administrative rule.

Comparison with federal regulations

Not applicable.

Comparison with rules in adjacent states

Not applicable.

Summary of factual data and analytical methodologies

Not applicable.

Text of Rule

SECTION 1. TCS 10.03 (3) (e) and (f) are created to read:

TCS 10.03 (3) (e) Any person who is a citizen of a country other than the United States if that person meets all of the following requirements:

1. The person graduated from a high school in this state or received declaration of equivalency of high school graduation from this state.

2. The person was continuously present in this state for at least 3 years following the first day of attending a high school in this state or immediately preceding receipt of a declaration of equivalency of high school graduation.

3. The person enrolls in a district school and provides the district board with proof that the person has filed or will file an application for a permanent resident visa with U.S. Citizenship and Immigration Services as soon as the person is eligible to do so.

(f) Any person verified by the department of veterans affairs as being a resident of this state under s. 38.24 (8) (a), Stats.

Small Business Impact

Not applicable.

Fiscal Estimate

The functions required by this rule can be absorbed within existing staff. Therefore, there is no fiscal effect on the agency.

Contact Person

Questions concerning this rule may be directed to Morna Foy, Executive Assistant, Wisconsin Technical College System, 4622 University Avenue, P.O. Box 7874, Madison, Wisconsin 53707-7874; telephone (608) 266-2449, e-mail morna.foy@wtcsystem.edu.

Submittal of Proposed Rules to the Legislature

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

Agriculture, Trade and Consumer Protection
CR 09-037

A rule-making order to revise Chapter ATCP 91, relating to selling commodities by weight, measure or count.

Rule Orders Filed with the Legislative Reference Bureau

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

Commerce

Licenses, Certifications and Registrations,

Ch. Comm 5

CR 08-110

Revises Chapter Comm 5, relating to building contractors and affecting small business.
Effective 10-1-09.

Rules Published with this Register and Final Regulatory Flexibility Analyses

The following administrative rule orders have been adopted and published in the August 31, 2009, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.

For subscription information, contact Document Sales at (608) 266-3358.

Agriculture, Trade and Consumer Protection CR 09-002

Revises Chapter ATCP 139, relating to consumer product safety. Effective 9-1-09, except sections affecting small business, effective 11-1-09.

Summary of Final Regulatory Flexibility Analysis

Current DATCP rules ban a number of dangerous consumer products, including dangerous children's products (some of the products are also banned by federal rules). This rule reorganizes and clarifies a number of the current product bans, without substantially altering those bans. This rule also adds new bans related to the following hazardous consumer products:

Lawn darts that can cause puncture wounds.

- Current DATCP rules ban "lawn darts" that are intended for use by children. The current DATCP rules are based on federal rules (16 CFR 1500.18(a)(4)). Recently, the federal Consumer Product Safety Commission adopted additional rules (16 CFR 1306) to ban "lawn darts" labeled for adult use, because those "lawn darts" are often used by children and pose a serious puncture wound hazard to children *and* adults.
- Consistent with current federal rules, this rule bans all "lawn darts," regardless of whether they are intended for use by children or adults.

Infant walkers that may propel infants down stairways.

- Current DATCP rules and federal rules (16 CFR 1500.18(a)(6)) ban hazardous infant walkers, but do not address stair-fall hazards. There is a voluntary industry standard (ASTM standard) for stair-fall protection, but some manufacturers and importers are not complying. The federal consumer product safety commission has documented that most "baby walker" incidents now involve children falling down stairs.
- This rule bans infant walkers that are banned by 16 CFR 1500.18(a)(6) and that fail to meet the stair-fall protection standard in ASTM standard F 977-07 ("Standard Consumer Safety Specification for Infant Walkers"). This rule applies to infant walkers, also known as "baby walkers," "baby bouncers," and "walker jumpers," that are propelled by infants. It does *not* apply to baby strollers that are propelled by attending adults.

Toys with magnets that can be swallowed and can cause serious intestinal injury or death.

- Small and powerful rare-earth magnets are now widely used in toys, building sets and jewelry. As the number of products with magnets has increased, so has the number of serious injuries to children. In several reported incidents, magnets have fallen out of toys and been swallowed by children. Swallowed magnets can attract

separately-swallowed metal objects through intestinal walls, and get trapped in place. The trapped magnets can twist or pinch the intestines, and can cause holes, blockages, infection and death if not treated properly and promptly. These injuries are difficult to diagnose. In the United States over the past 3 years, there have been 86 reported injuries, one reported death, and about 8 million magnetic toys recalled.

- This rule bans products which contain magnets that may be swallowed by a child. The ban does *not* apply to toys that comply with federal regulations under 15 USC 2056b (the federal regulations adopt standards established by the "Standard Consumer Safety Specification for Toy Safety" published by ASTM International). Nor does it apply to toys in which the magnets are used only as internal parts of motors, relays, speakers or other electrical components, provided that the magnetic action is not part of the play pattern of the toy.

Cribs that can strangle or suffocate infants.

- Over the past 20 years, more than 1,100 children have died from crib-related injuries in the United States, and more than 11,600 children are hospitalized with crib-related injuries each year. Current federal regulations (16 CFR 1500.18(13) and (14)) ban cribs and related enclosures that fail to comply with applicable federal standards under 16 CFR 1508 and 1509 (the federal regulations apply to cribs manufactured after 1974 and 1983, respectively).
- This rule bans baby cribs and related enclosures that are currently banned by federal law under 16 CFR 1500.18(13) or (14).

Yo-yo elastic tether toys that can strangle children.

- Yo-yo elastic tether toys, often called "yo-yo waterballs," have a weighted object attached to a stretchable elastic cord that can extend to over 2 feet. (These "yo-yo waterballs" are different from traditional yo-yos, which do not have stretchable elastic cords). Instructions tell children to "throw the ball into the air and try and catch it," encouraging a lasso-like movement. But the weighted object is heavy enough to generate significant momentum when swung like a lasso, which makes the toy difficult to control. In Wisconsin, there have been 7 reported incidents in which children became unconscious after the cord wrapped tightly around the child's neck and cut off circulation. In other cases, children have suffered broken blood vessels affecting eyes, face and head areas. Illinois, New Jersey, the United Kingdom and Australia have already banned this toy from sale.
- This rule bans yo-yo elastic tether toys that do not comply with the standards for yo-yo elastic tether toys established by federal regulations under 15 USC 2056b (the federal regulations adopt standards established by the "Standard Consumer Safety Specification for Toy Safety" published by ASTM International).

Toys containing excessive concentrations of lead, which can cause serious long-term health effects.

- A recently-enacted federal law (15 USC 1278a) treats as banned hazardous substances any children's products that contain lead in excess of the following amounts, beginning on the following dates:
 - * 600 parts per million beginning 180 days after August 14, 2008.
 - * 300 parts per million beginning one year after August 14, 2008.
 - * 100 parts per million beginning 3 years after August 14, 2008.
- This rule bans children's products containing lead that are treated as banned hazardous substances under 15 USC 1278a. This ban does not apply to any of the following:
 - * Electronic devices, including batteries, which meet alternative federal standards related to lead exposure.
 - * A product component that is fully covered or encased (by something more than paint or electroplating), so that the component is inaccessible to a child despite normal and reasonably foreseeable use and abuse of the product.

DATCP has not incorporated a small business enforcement policy in this rule, as this rule will benefit most affected businesses by clarifying current rules and harmonizing state and federal law. This rule is based on existing federal regulations and, in the case of stair-fall protection in infant walkers, existing industry safety standards. Most affected businesses are already complying with the standards in this rule. Some manufacturers and retailers may need to modify product designs or curtail the sale of hazardous products that violate this rule. But, overall, this rule will have little adverse impact on affected business.

Summary of Comments by Legislative Review Committees

On May 18, 2009, DATCP transmitted the rule for legislative review. The rule was assigned to the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection and to the Assembly Committee on Consumer Protection. The Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection did not hold a hearing and took no action. The Assembly Committee on Consumer Protection did not hold a hearing and took no action.

**Insurance
CR 09-022**

Revises Chapters Ins 2, 5, 6, 26 and 28, relating to licensing, prelicensing, and continuing education for insurance agents, and affecting small business. Effective 9-1-09.

Summary of Final Regulatory Flexibility Analysis

This rule change will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

No comments were received.

**Medical Examining Board
CR 09-005**

Amends section Med 20.05 (title) and creates section Med 20.055, relating to temporary certificates for respiratory care practitioners who are certified in other states. Effective 9-1-09.

Summary of Final Regulatory Flexibility Analysis

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

Summary of Comments by Legislative Review Committees

No comments were reported.

**Medical Examining Board
CR 09-006**

Revises sections Med 8.08 and 8.10 (3), relating to prescribing limitations for physician assistants. Effective 9-1-09.

Summary of Final Regulatory Flexibility Analysis

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

Summary of Comments by Legislative Review Committees

No comments were reported.

**Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 08-074**

Creates Chapter NR 40, relating to the identification, classification and control of invasive species. Effective 9-1-09.

Summary of Final Regulatory Flexibility Analysis

The rule does not have a significant economic impact on a substantial number of small businesses. Species assessed and listed in this rule were chosen in part because limiting their use would not cause significant hardships for any sector of society. A few businesses will need to stop the sale of a few species that are not major commodities for them. Some businesses, governmental agencies and individuals will be expected to follow best management practices (BMPs) or take other reasonable precautions when conducting their business to prevent the unknowing or incidental spread of invasive species. Such stakeholder groups are being involved in the development of such BMPs to ensure that they are reasonable and feasible. Further justification follows for each group of species.

Terrestrial and Aquatic Plants, Algae and Cyanobacteria:

The Wisconsin Nursery Association surveyed its members and found that there are very few that are growing the plants listed in this rule, so the impacts will be minor. Businesses that have valid reasons to use restricted species in ways that minimize their spread may apply for a permit to allow specific uses. A very small number of floriculture growers, herbalists, nursery growers and others are likely to utilize the permit process. Unless they fit under an exemption or have obtained a permit, any business that sells or uses prohibited or restricted species will need to sell the plants prior to rule implementation, or keep them indefinitely. Department staff will be contacting potentially affected businesses prior to implementation.

Landowners or public land managers whose property contains a prohibited species may be asked to control the species. Department staff or cooperators will work with the landowners to determine the best means to contain the prohibited species. Where possible the Department will assist with the control effort and will seek funding, such as federal grants, to assist in the cost of controls. Landowners that possess restricted species on their property are encouraged to control the invasive species, but are not required to do so.

Boaters, lake associations and state, county, or municipal water resource managers and private consultants, water garden and aquarium industry may be affected by this rule. They will not be allowed to introduce listed species to the environment and will need to take reasonable precautions to avoid transport or introducing aquatic invasive species. Marinas, fishing resorts, lakeshore owners, anglers and others will benefit from the results of this rule as fewer water bodies become infested with invasives.

Utilities, mowing contractors and others who conduct vegetation maintenance or construction activities may need to modify their practices to prevent the inadvertent spread of listed species. Restoration and water resources consultants, vegetation managers, landscape contractors, property managers and landowners all may benefit from this rule.

Fish and aquatic invertebrates:

The rule may affect fish farmers, aquarium–fish stores and crayfish trappers. The rule does not impose any additional reporting or record–keeping requirements on them. No species currently handled on fish farms will be prohibited or further restricted, but new non–native species could not be used for aquaculture under the rule. Grass carp are not currently permitted in Wisconsin and are prohibited under the rule. This may be a point of disagreement with the aquaculture industry. The importation of mosquitofish to fish farms for rearing, introduction, or use as bait is currently illegal without a Department permit under s. 29.735, Stats., and the rule does not change that, except to explicitly condone the incidental or unknowing importation of this species when not due to a person’s failure to take reasonable precautions. It is not the intention of the Department to curtail current importation practices, but we are interested in working with the Wisconsin Aquaculture Association and individual fish farmers to develop best management practices that would, if possible, limit the incidental importation of this species and that would minimize or eliminate its dispersal with bait after importation.

The rule prohibits only 2 species now handled in the aquarium trade, the eastern and western mosquitofish, but viable non–native aquarium species not currently in trade would be prohibited and the identified fish species in the aquarium trade would have to be confined to safe facilities. The prohibition of mosquitofish may be a point of disagreement with the aquarium–fish industry. Consistent with the newly approved VHS rules, recreational anglers will be prohibited from transporting live fish, except under certain defined conditions, and boaters will be required to observe certain safety precautions, including draining all water from boats and containers and clearing all non–native species from their boats and trailers. Crayfish trappers will be required to keep any live rusty crayfish that they have trapped in safe facilities.

Terrestrial Invertebrates and Plant Disease Causing Microorganisms:

No significant new impacts are expected. This rule supports existing authority for prohibitions and quarantine enforcement already in place for DATCP and outlined in ch. ATCP 21, Wis. Adm. Code, and ch. 94, Stats., thus businesses that transport, possess and transfer raw wood products such as pulp and paper mills, sawmills and firewood dealers may be affected by more rigorous enforcement of quarantine rules. Movement of raw, untreated products out of quarantined areas will be restricted. Treatment of raw wood products or restrictions on timing of movement out of a quarantined area may be required.

Terrestrial and Aquatic Vertebrates (except fish):

No significant impact is anticipated for small businesses. Anyone raising Russian boar or other wild swine for meat–production agriculture will be able to continue their business but will be required to secure a DNR permit. Sales and possession of legally obtained monk parrots as pets will not be affected. Existing US Food and Drug Administration regulation 21 CFR § 1240.62 already bans the sale of red–eared slider turtles with carapace lengths less than 4 inches, so this is not a new regulation.

Summary of Comments by Legislative Review Committees

Department staff met with representatives of most organizations that had significant comments on the draft rule and revised the rule to accommodate their concerns to the extent practicable.

Natural Resources

Environmental Protection — Air Pollution Control, Chs. NR 400— CR 08–103

Revises Chapter NR 428, relating to the control of nitrogen oxide emitted by stationary sources in the ozone nonattainment area in southeastern Wisconsin, and to SIP approvability and miscellaneous implementation issues. Effective 9–1–09.

Summary of Final Regulatory Flexibility Analysis

The existing rule requirements apply to large industrial or electric generation sources. Based on the limited nature of the proposed changes to the existing rule, there is no direct impact to small businesses anticipated.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Commerce, Utilities, Energy and Rail. On June 3, 2009, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments or requests for modification from either of the committees.

Public Instruction

CR 09–011

Revises Chapter PI 22, relating to precollege scholarships. Effective 9–1–09.

Summary of Final Regulatory Flexibility Analysis

The rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments by Legislative Review Committees

No comments were reported.

**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.

Summary of Final Regulatory Flexibility Analysis

This rule order does not have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were reported.

**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.

Summary of Final Regulatory Flexibility Analysis

The rules will have no effect on small business.

Summary of Comments by Legislative Review Committees

No comments on the rules were received from either legislative standing committee.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **August 2009**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Agriculture, Trade and Consumer Protection

Ch. ATCP 139

ATCP 139.01 (1), (1m), (2m)
 ATCP 139.04 (title), (intro.), (6), (12)
 ATCP 139.05 (title), (4)
 ATCP 139.055
 ATCP 139.12

Insurance

Ch. Ins 2

Ins 2.13 (12) (intro.), (12m)

Ch. Ins 5

Ins 5.17 (3) (e)

Ch. Ins 6

Ins 6.50 (2) (a), (b)
 Ins 6.57 (3), (5), (6)
 Ins 6.58 (5) (a), (b)
 Ins 6.59 (2), (3), (4) (a), (an), (ap), (b), (c), (8) (a), (b), (c), (e)
 Ins 6.61 (15)
 Ins 6.63 (1), (2), (3)

Ch. Ins 26

Ins 26.03 (1), (3m), (5)
 Ins 26.04 (2) (a), (f)
 Ins 26.05 (1) (f), (2), (2g), (2r), (3)
 Ins 26.06 (1) (intro.), (a), (d), (g), (2) (b), (2g), (2r)
 Ins 26.07 (1) (a), (e), (2)
 Ins 26.08
 Ins 26.09
 Ins 26 Appendix 5

Ch. Ins 28

Ins 28.03 (3)
 Ins 28.04 (1) (b), (g), (h), (i), (2)
 Ins 28.06 (1) (a), (2) (b), (5) (a), (f), (7) (b)
 Ins 28.07 (1) (d), (f)
 Ins 28.09

Medical Examining Board

Ch. Med 8

Med 8.08 (1), (2) (a), (e), (3)
 Med 8.10 (3)

Ch. Med 20

Med 20.05 (title)

Med 20.055

Natural Resources

Ch. NR 40 (Entire Chapter)

Ch. NR 428

NR 428.02 (7e)
 NR 428.04 (1), (3) (b)
 NR 428.05 (1), (4) (b)
 NR 428.07 (intro.), (1) (a), (b), (3), (4) (c)
 NR 428.08 (2) (f)
 NR 428.09 (2) (a)
 NR 428.12
 NR 428.20 (1)
 NR 428.22 (1) (d), (2) (intro.)
 NR 428.23 (1) (b)
 NR 428.24 (1) (b)
 NR 428.25 (1) (a), (3) (b)

Public Instruction

Ch. PI 22

PI 22.01
 PI 22.02 (2), (5)
 PI 22.03
 PI 22.04 (1), (3) (a), (4)
 PI 22.05 (1), (2), (4)
 PI 22.06 (2) to (8)

Revenue

Ch. Tax 8

Tax 8.03
 Tax 8.05

University of Wisconsin System

Ch. UWS 17 (Entire Chapter)

Ch. UWS 18

UWS 18.02
 UWS 18.04 (5)
 UWS 18.06
 UWS 18.07
 UWS 18.09
 UWS 18.10
 UWS 18.11
 UWS 18.12

Editorial Corrections

Corrections to code sections under the authority of s. 13.92 (4) (b), Stats., are indicated in the following listing.

Insurance

Ch. Ins 2

Ins 2.81 (4) (a), (b)

Ch. Ins 6

Ins 6.50 (2) (b)

Ins 6.63 (1)

Ch. Ins 28

Ins 28.02

Ins 28.04 (1) (h)

Medical Examining Board

Ch. Med 8

Med 8.03

University of Wisconsin System

Ch. UWS 17

UWS 17.11 (1) (title)

Ch. UWS 18

UWS 18.07 (title)

UWS 18.11 (4) (d), (6) (title), (7) (title)

Sections Affected by Corrections Not Published

Corrections under s. 13.92 (4) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Legislative Reference Bureau Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of Agency Reference and/or Cross-Reference	Outdated Agency Reference / Invalid Cross-Reference	Correction
ATCP 92.30 (5) (f)	98.25	98.16 (3m)
ATCP 92.31 (3)	98.16 (2) (c)	98.16 (2) (cm)
ATCP 102.11 (2) (a)	345.05 (1) (a)	345.05 (1) (c)
Comm 122.01 (1), 122.02 (4)	560.183 (1) (ag)	36.60 (1) (ag)
Comm 122.02 (1)	560.183 (1) (ad)	36.60 (1) (ad)
Comm 122.02 (5)	560.183 (1) (ap)	36.60 (1) (ap)
Comm 122.04 (intro.)	20.143 (1) (jc), (jm) and (kr)	20.285 (1) (jc) and (ks)
Comm 122.05 (1) (d)	560.183	36.60
Comm 122.06 (2) (intro.)	560.183 (9)	36.60 (9)
Comm 128.02 (1)	560.184 (1) (ag)	36.61 (1) (ag)
Comm 128.02 (2)	560.184 (1) (aj)	36.61 (1) (aj)
Comm 128.02 (5)	560.184 (1) (am)	36.61 (1) (am)
Comm 128.02 (6)	560.184 (1) (b)	36.61 (1) (b)
Comm 128.03 (1)	560.184 (4)	36.61 (4)
Comm 128.03 (2) (intro.)	20.143 (1) (jc), (jL) and (kr)	20.285 (1) (jc) and (ks)
Comm 128.04 (1) (h)	560.184	36.61
Comm 128.05 (2) (intro.)	560.184 (3) (a)	36.61 (3) (a)
Comm 131.50 (1)	560.125 (4) (c), (d), and (f)	560.125 (4) (d) and (f)
DHS 10.62 (1) (b) (intro.)	46.286 (1) (b) 1m.	46.286 (1) (b) 2m. a.
DHS 62.16	20.435 (7) (hy) (twice)	20.435 (5) (hy) (twice)
DHS 77.01 (1)	20.435 (6) (a) and (hs)	20.435 (6) (a) and (7) (hs)
DHS 77.04 (1) (a) and (c)	20.435 (6) (a) and (hs)	20.435 (6) (a) and (7) (hs)
DHS 77.08 (3)	20.435 (6) (hs)	20.435 (7) (hs)
DHS 138.05 (1) (e)	20.435 (5) (am)	20.435 (1) (am)
DHS 145.13 (2) (a)	20.435 (5) (e)	20.435 (1) (e)
DHS 147.01	20.435 (5) (cc)	20.435 (1) (cc)
DHS 147.06 (6) (a)	20.435 (5) (cc)	20.435 (1) (cc)
DHS 149.01	49.17 (5) (a)	253.06 (5) (a)

Location of Agency Reference and/or Cross-Reference	Outdated Agency Reference / Invalid Cross-Reference	Correction
DHS 149.03 (13)	49.17 (3m)	253.06 (3m)
DHS 149.03 (25) and (40)	49.17 (twice in (25))	253.06 (twice in (25))
DHS 149.03 (28)	49.17 (5) (b)	253.06 (5) (b)
DHS 149.04, 149.05 (9), 149.08 (1) (a)	49.17	253.06
DHS 149.18 (1) (a)	49.17 (6)	253.06 (6)
DHS 167.02	20.435 (5) (ds)	20.435 (1) (ds)
DHS 182.01, 182.03 (5), 182.04 (intro.), 182.06 (5) (a)	20.435 (5) (ef)	20.435 (1) (ef)
DHS 199.01, 199.03 (8), 199.06 (5) (a) and (b)	20.435 (5) (fm)	20.435 (1) (fm)
Ins 3.40 (2)	632.32 (4) (b)	632.32 (4) (a) 3m.
NR 150.40 (1) (intro.)	345.05 (1) (a)	345.05 (1) (am)
Tax 2.11 (1) (b)	77.54 (6m)	77.51 (7h) (a)
Tax 11.38 (3) (intro.)	77.54 (6m)	77.51 (7h) (a)
Tax 11.40 (1) (c)	77.54 (6) (a) and (6m)	77.51 (7h) (a) and 77.54 (6) (a)
Tax 11.41 (1) (b) 1., 11.56 (1) (a)	77.54 (6m)	77.51 (7h) (a)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 288. Relating to Directing Agency Action Concerning Bonds to be Issued as Qualified Midwestern Disaster Area Bonds.

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