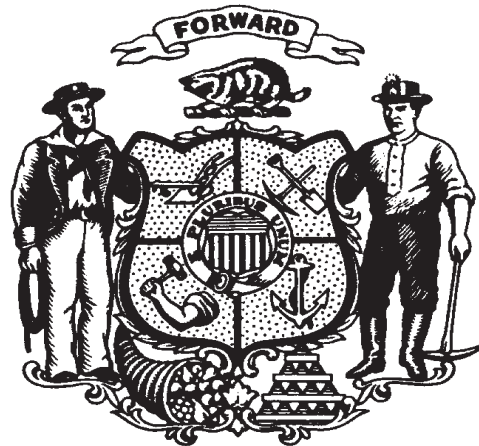


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WISCONSIN ADMINISTRATIVE REGISTER

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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.

Agriculture, Trade and Consumer Protection (2)

1. **EmR1003** — Rule adopted revising **ss. ATCP 60.15 and 60.20**, relating to somatic cell standards for dairy goat milk.

Finding of Emergency

Recently, the National Conference of Interstate Milk Shippers voted to relax the standard for somatic cells in grade A goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml. The United States Food and Drug Administration accepted this change and will include it in the next edition of the Interstate Pasteurized Milk Ordinance. The United States Department of Agriculture is adopting the same standard for grade B goat milk, as part of its standards for “Milk for Manufacturing Purposes and its Production and Processing.”

Wisconsin rules currently establish a limit of 1,000,000 somatic cells per ml in goat milk, which is more stringent than the new national standard of 1,500,000 per ml. The more stringent Wisconsin standard, if not modified to conform to the new national standard, will put Wisconsin dairy goat milk producers at a significant financial, operational, and competitive disadvantage compared to producers in other states.

This emergency rule modifies Wisconsin’s current standard, and makes it consistent with the new national standard. The department of agriculture, trade and consumer protection (DATCP) is adopting this rule as a temporary emergency rule, pending rulemaking proceedings to modify the standard on a more “permanent” basis. “Permanent” rulemaking proceedings normally require over a year to complete. This emergency rule is needed to mitigate a potential hardship to Wisconsin producers of dairy goat milk, pending the adoption of “permanent” rules.

Publication Date: February 4, 2010

Effective Dates: February 4, 2010
through July 3, 2010

Hearing Date: June 15, 2010

2. **EmR1012** — Rule adopted to create **section ATCP 70.03 (7) (e) and (f)**, relating to food processing plant license exemptions for certain home-canners and maple sap processors.

Finding of Emergency

(1) The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state food processing plant license requirements under s. 97.29, Stats.

(2) Recent legislation (2009 Act 101, enacted on February 4, 2010) created a limited exemption from food processing plant license requirements under s. 97.29, Stats., for persons who home-can limited quantities of acidic, acidified or fermented vegetable and fruit products for retail sale at community and social events or at farmers’ markets.

(3) Home-canned food products, if not properly canned, may pose a risk of serious food safety hazards such as botulism.

(4) DATCP has received many requests for clarification of the new license exemption under Act 101. In order to facilitate compliance and protect consumers from potentially serious food safety hazards, DATCP must adopt administrative rules to clarify the scope, application and terms of the new license exemption.

(5) Implementing rules are urgently needed because of the seriousness of the potential food safety hazards, and the seasonal nature of the farmers’ markets and other events at which home-canned products may be sold. The normal rulemaking process takes over a year to complete, and cannot be completed in time for this summer’s farmers’ markets (which begin as early as mid-April or May). Persons who wish to sell home-canned food products must clearly understand the scope of the license exemption, and the food safety standards that must be met in order to qualify.

(6) This temporary emergency rule clarifies the scope, application and terms of the new license exemption under Act 101, pending the completion of “permanent” rules by the normal rulemaking process. This emergency rule is needed to protect the public health, safety and welfare, and to facilitate fair and orderly implementation of the new license exemption.

(7) This emergency rule also exempts, from food processing plant license requirements under s. 97.29, Stats., a person who collects and processes relatively small quantities of maple sap to produce maple syrup or concentrated maple sap for sale to other processors for further processing. These small-scale processing activities pose

minimal food safety risks, and the current license requirement imposes an unnecessary cost and compliance burden. An emergency rule is needed to relieve these cost and compliance burdens for the maple sap collection and processing season that typically begins in March. This emergency rule creates a temporary license exemption, pending the completion of “permanent” rules by the normal rulemaking process. This emergency rule clearly defines the scope, application and terms of the exemption, in order to protect public health, safety and welfare.

Publication Date: April 22, 2010
Effective Dates: April 22, 2010 through September 18, 2010
Hearing Date: May 25, 2010

Children and Families

Safety and Permanence, Chs. DCF 37–59

EmR0937 — Rule adopted revising **Chapters DCF 56 and 58**, relating to foster care and kinship care.

Finding of Emergency

The Department of Children and Families 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 facts constituting the emergency is:

2009 Wisconsin Act 28 assumes that court-ordered kinship care relatives will be applying for a license to operate a foster home beginning after January 1, 2010, and continuing throughout 2010. This rule creates the first two levels of the new levels of care system for foster care. The newly-licensed kinship care relatives will be incorporated into the foster care program. Licensing these relatives will allow the state to claim an additional \$6.5 million in Title IV–E funds for 2010. Act 28 appropriates this \$6.5 million to be expended in 2011.

Publication Date: December 30, 2009
Effective Dates: January 1, 2010 through May 30, 2010
Extension Through: July 29, 2010
Hearing Dates: March 17, March 31, April 8, 2010

Children and Families

Family and Economic Security, Chs. DCF 101–153

EmR1024 — Rule adopted creating **Chapter DCF 110**, relating to transitional jobs for low-income adults.

Finding of Emergency

The Department of Children and Families 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 facts constituting the emergency is:

Initial funding for the transitional jobs demonstration project will come from the Temporary Assistance to Needy Families (TANF) Emergency Contingency Fund under the American Recovery and Reinvestment Act of 2009. Spending for subsidized employment is one of the ways that the state can earn additional federal dollars under the TANF Emergency Contingency Fund. The deadline for earning the additional federal dollars is September 30, 2010.

Publication Date: June 30, 2010
Effective Dates: July 1, 2010 through November 27, 2010
Hearing Date: August 5, 2010
 (See the Notice in this Register)

Children and Families (2)

Early Care and Education, Chs. DCF 201–252

1. **EmR1015** — Rule adopted revising **Chapter DCF 201**, relating to authorized hours of subsidized child care and affecting small businesses.

Finding of Emergency

The Department of Children and Families 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 facts constituting the emergency is:

2009 Wisconsin Act 28 assumes that implementation of s. 49.155 (6g), Stats., will save an estimated \$9 million over the 2009–2011 biennium.

Publication Date: May 17, 2010
Effective Dates: May 17, 2010 through October 13, 2010
Hearing Date: June 17, 2010

2. **EmR1027** — Rule adopted revising **Chapter DCF 201**, relating to child care subsidy program integrity.

Finding of Emergency

The Department of Children and Families 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 facts constituting the emergency is:

The Department of Children and Families has determined that significant disparities currently exist between DCF 201 and the intent of 2009 Wisconsin Acts 28 and 77 regarding Wisconsin Shares program integrity efforts. The recent efforts of the legislature and the department to address child care fraud and program integrity are estimated to save \$100 million over the course of the biennium. Currently over \$7.1 million of child care provider overpayments have yet to be collected due to the lack of authority to use basic collections practices such as tax intercept, wage levy, and property liens. This rule will permit the department to more aggressively collect on these debts, strengthen the department’s ability to further tighten requirements for child care providers wishing to do business with the Wisconsin Shares program, and better enforce the rules of the program. These changes will result in continued fiscal savings as well as ensure better quality child care for the children of Wisconsin.

Publication Date: Not available at time of publication
Effective Dates: Not available at time of publication
Hearing Date: August 6, 2010

(See the Notice in this Register)

Commerce

Wis. Commercial Building Code, Chs. Comm 60–66

EmR1022 — Rule adopted creating s. **Comm 62.0400 (5)**, relating to no smoking signs.

Finding of Emergency

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

1. Implementation of 2009 Wisconsin Act 12, s. 101.123, Stats., is to take effect July 5, 2010.
2. Under the Act, the department is to establish by rule uniform characteristics for no smoking signs.
3. Under the Act, the responsibilities of person in charge of a public conveyance or at a location where smoking is prohibited include the posting of no smoking signs.
4. The department believes that the emergency rules are necessary in order to clarify the minimum no smoking sign characteristics so that persons in charge may fulfill the statutory obligations.

Publication Date: June 28, 2010

Effective Dates: July 5, 2010 through
December 1, 2010

Hearing Date: July 26, 2010

(See the Notice in this Register)

Commerce (6)

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

1. **EmR0931** — Rule adopted creating **Chapter Comm 136**, relating to midwestern disaster area bonds.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of public welfare. The facts constituting the emergency are as follows.

Between June 14 and July 9, 2008, thirty Wisconsin counties were declared major disaster areas by the President as a result of severe storms, tornados or flooding in 2008 that caused extensive damage to communities, residents, businesses, the economy and critical infrastructure. Subsequently, the federal Heartland Disaster Tax Relief Act of 2008 was enacted, authorizing the Governor of Wisconsin to designate up to \$3,830,112,000 in Qualified Midwestern Disaster Area Bonds, which must be issued before January 1, 2013, for the purpose of encouraging economic development and recovery in the 30 counties.

To implement the provisions this federal Act, Governor Jim Doyle issued Executive Order #288, directing the Department to promulgate rules for allocating Wisconsin's Qualified Midwestern Disaster Area Bonding Authority, and including the necessary provisions to ensure that bonds are allocated to eligible projects on the basis of providing assistance to areas in the order in which the assistance is most needed. This rule is the result of that directive.

Publication Date: November 9, 2009

Effective Dates: November 9, 2009 through
April 7, 2010

Extension Through: August 5, 2010

Hearing Date: January 25, 2010

2. **EmR1006**— Rule adopted to create **Chapter Comm 137**, relating to reallocations for recovery zone facility bonds as established under the federal American Recovery and Reinvestment Act of 2009, and affecting small businesses.

Exemption From Finding of Emergency

The Legislature, by Section 5 (1) (b) in 2009 Wisconsin Act 112, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: March 5, 2010

Effective Dates: March 5, 2010 through
August 1, 2010

(subject to 2009 Wis. Act 112, s. 5)

Hearing Date: May 13, 2010

3. **EmR1008** — Rule adopted to create **Chapter Comm 124** relating to the Forward Innovation Fund, and affecting small businesses.

Exemption From Finding of Emergency

The Legislature, by Section 9110 (8) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: March 22, 2010

Effective Dates: March 22, 2010 through
July 1, 2010

Hearing Date: May 26, 2010

4. **EmR1013** — Rule adopted to create **Chapter Comm 121**, relating to the small business innovation research assistance program, and affecting small businesses.

Exemption From Finding of Emergency

The Legislature, by Section 9110 (16u) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: April 21, 2010

Effective Dates: April 21, 2010 through
September 17, 2010

Hearing Date: June 11, 2010

5. **EmR1019** —Rule adopted to create **Chapter Comm 135**, relating to tax credits for investments in food processing plants and food warehouses.

Finding of Emergency

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

The facts constituting the emergency are as follows. Under sections 71.07 (3rm), 71.28 (3rm) and 71.47 (3rm) of the Statutes, as created in 2009 Wisconsin Act 295, a taxpayer may claim a tax credit for investments in food processing plants and food warehouses during taxable years beginning after December 31, 2009.

Section 560.2056 (4) of the Statutes, as likewise created in 2009 Wisconsin Act 295, requires the Department to (1) implement a program for certifying taxpayers as eligible for the food processing plant and food warehouse investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in consultation with the Department of Revenue, promulgate rules to administer the program. No other provisions are established in the Statutes regarding the specific process for taxpayers to use in applying for the credits, and for the Department of Commerce to use in certifying eligible taxpayers and in allocating the credits.

Because of enactment of 2009 Wisconsin Act 295, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been or will be incurred during taxable years that began after December 31, 2009. In addition, section 71.07 (3rm) of the Statutes includes a \$1,000,000 tax–credit allocation that became available on May 27, 2010, and expires on June 30, 2010.

Although the Department of Commerce has begun promulgating the permanent rule that is required by 2009 Act 295, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to accommodate allocating the tax credits for the 2009–10 fiscal year. This emergency rule will enable the Department of Commerce to establish an application, certification, and tax credit allocation process for the entities that will be eligible for the allocation that expires on June 30, 2010.

Publication Date: June 8, 2010
Effective Dates: June 8, 2010 through November 4, 2010

6. **EmR1026** — Rule adopted creating **Chapter Comm 139**, relating to rural outsourcing grants.

Exemption From Finding of Emergency

The Legislature, by Section 45 (1) (b) of 2009 Wisconsin Act 265, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: July 2, 2010
Effective Dates: July 2, 2010 through November 28, 2010

Corrections

EmR0939 — Rule adopted revising **Chapter DOC 302**, relating to sentence calculations and prison release and to administrative review of inmate classification decisions.

Finding of Emergency

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

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Department is responsible for implementing several of those procedures. Specifically, the department is responsible for implementing the early release programs under: (1) s PAT (2) ERP/CIP (3) CER (4) Risk reduction (5) 75%/85%. In addition, the department is revising section 302.18 to facilitate the review of inmates for purposes of early release.

If the rule is not created promptly and immediately, the Department will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the Department to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary for a prompt implementation of the legislative mandates concerning the release of inmates meeting established criteria while the permanent rules are being developed.

Publication Date: December 31, 2009
Effective Dates: December 31, 2009 through May 29, 2010
Extension Through: July 28, 2010
Hearing Date: February 25, 2010

Earned Release Review Commission

(Formerly Parole Commission)

EmR0940 — Rule adopted revising **Chapter PAC 1**, relating to the release of inmates through parole or other procedures.

Finding of Emergency

The Wisconsin Earned Release Review Commission finds that an emergency exists and that emergency rules are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of facts constituting the emergency is:

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Earned Release Review Commission (formerly the Parole Commission) is responsible for implementing several of those procedures. Specifically, the commission is responsible for considering the early release of inmates under: (1) section 304.06 (1) (bg) 1. and 2., Stats., after the inmate has served the term of confinement of their bifurcated sentence less positive adjustment time, (2) section 304.06 (1) (bg) 3. and 4., Stats., after the inmate has served either 75 % or 85 % of their term of confinement, depending on the offense for which the inmate was sentenced, and (3) section 302.1135 (2) (a), (b), and (c), Stats., based on age or extraordinary health.

If the rule is not created promptly and immediately, the commission will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the department of corrections to manage the inmate population in a safe and effective manner. In addition, a delay will affect the

management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond to the legislatively recognized need to review inmates who meet the requirements under the statutes for potential release while the permanent rules are being developed.

Publication Date: December 31, 2009
Effective Dates: December 31, 2009
 through May 29, 2010
Extension Through: July 28, 2010
Hearing Date: February 23, 2010

Employee Trust Funds

EmR0938 — Rule adopted revising **Chapters ETF 10, 20 and 40**, relating to the implementation of benefit changes mandated in 2009 Wisconsin Act 28; specifically, domestic partner benefits and the expansion of health insurance coverage to adult dependents up to the age of 27 years.

Finding of Emergency

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

ETF cannot promulgate a permanent rule in compliance with the mandated changes by January 1, 2010, which is the effective date of the domestic partnership and the health insurance provisions of 2009 Wisconsin Act 28. Without an emergency rule in place, the ability of ETF to enroll and cover participants' domestic partners and to provide health insurance to adult dependents would be seriously impaired. ETF would be unable to provide health insurance and other benefits to domestic partners and adult dependents.

Publication Date: December 28, 2009
Effective Dates: January 1, 2010
 through May 30, 2010
Extension Through: July 29, 2010
Hearing Date: February 12, 2010

Government Accountability Board

EmR1016 — Rule adopted to create **section GAB 1.91**, relating to organizations making independent disbursements.

Finding of Emergency

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists as a result of the United States Supreme Court decision *Citizens United v. FEC*, 558 U.S. ___, (No. 08–205)(January 21, 2010). Within the context of ch. 11, Stats, the rule provides direction to organizations receiving contributions for independent disbursements or making independent disbursements. Comporting with *Citizens United*, this emergency rule order does not treat persons making independent disbursements as

full political action committees or individuals under s. 11.05, Stats., for the purposes of registration and reporting. With respect to contributions or in-kind contributions received, this emergency rule order requires organizations to disclose only donations “made for” political purposes, but not donations received for other purposes.

The Board adopts the legislature’s policy findings of s. 11.001, Stats., emphasizing that one of the most important sources of information to voters about candidates is available through the campaign finance reporting system. The Board further finds that it is necessary to codify registration, reporting and disclaimer requirements for organizations receiving contributions for independent disbursements or making independent disbursements so that the campaign finance information is available to voters. The rule must be adopted immediately to ensure the public peace and welfare with respect to the administration of current and future elections.

Publication Date: May 20, 2010
Effective Dates: May 20, 2010 through
 October 16, 2010

Health Services (2)

Health, Chs. DHS 110—

- EmR1004** — Rule adopted to create **sections DHS 195.145 and 197.145**, relating to carbon monoxide detectors in hotels, motels, tourist rooming houses and bed and breakfast establishments, and affecting small businesses.

Finding of Emergency

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

Section 101.149 (2) and (3), Stats., requires the owners of lodging establishments, including hotels, tourist rooming houses, and bed and breakfast establishments that were constructed on or before October 1, 2008, or had plans reviewed by the department of commerce before October 1, 2008, to, not later than April 1, 2010, install carbon monoxide detectors in every residential building that has a fuel-burning appliance, unless, pursuant to s. 101.149 (5), Stats., the building does not have an attached garage and all fuel-burning appliances in the building have sealed combustion units that are either covered by the manufacturer’s warranty against defects or are inspected under rules promulgated by DHS.

Section 254.74 (1) (am), Stats., requires DHS to promulgate rules under which DHS would conduct inspections of sealed combustion units for carbon monoxide emissions, and rules that specify the conditions under which DHS may issue orders to correct violations of s. 101.149 (2) or (3), Stats.

Publication Date: March 1, 2010
Effective Dates: April 1, 2010 through
 August 28, 2010
Hearing Dates: April 21, 23, 27, 28, 30, 2010

- EmR1009** — Rule adopted to revise **Chapter DHS 137**, relating to anatomical gifts and the Wisconsin Donor Registry.

Finding of Emergency

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

There are over 105,000 people in the United States on the national waiting list for organ transplants including 1,500 in Wisconsin. Due to the limited availability of organs for transplantation, 18 people die each day in the United States.

As part of Wisconsin's response to the need for increased organ and tissue donation, the department, as authorized under s. 157.06 (20), Stats., has established the Wisconsin Donor Registry (Donor Registry).

The Donor Registry will make it easier for Wisconsin residents to become donors and for procurement organizations to identify donors, and thus it should increase the supply of available organs and tissues, which may save the lives of persons awaiting transplant.

Promulgating the rules for the Donor Registry as emergency rules will enable department–authorized procurement organizations to quickly determine whether a person who is at or near death has a record of gift. In addition, the Donor Registry makes it possible for individuals to immediately make anatomical gifts.

The Donor Registry will become available for use by the public upon the effective date of these emergency rules and may be accessed by the public at yesIwillwisconsin.com. Substantially identical permanent rules are being proposed concurrent to this emergency order.

Publication Date: March 29, 2010
Effective Dates: March 29, 2010 through August 25, 2010
Hearing Date: May 5, 2010

Insurance (4)

1. **EmR0925** — Rule adopted to create **section Ins 3.75**, relating to continuation of group health insurance policies.

Exemption From Finding of Emergency

Under 2009 Wisconsin Act 11, section 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.

(4) CONTINUATION COVERAGE RULES. (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the

statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.** [Emphasis Added]

Publication Date: October 1, 2009
Effective Dates: October 2, 2009 through October 1, 2010
Hearing Date: December 8, 2009

2. **EmR0945** — Rule adopted revising **section Ins 3.75**, relating to the continuation of group health insurance policies.

Exemption From Finding of Emergency

Under 2009 Wisconsin Act 11, section 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.

(4) CONTINUATION COVERAGE RULES (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.** [Emphasis Added]

Publication Date: January 7, 2010
Effective Dates: January 8, 2010 through June 6, 2010
Hearing Date: May 5, 2010

3. **EmR1005** — A rule adopted creating **section Ins 3.36**, relating to treatment of autism spectrum disorders and affecting small business.

Exemption From Finding of Emergency

The Commissioner of Insurance pursuant to s. 632.895 (12m) (f) 2., Stats., need not find that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety or welfare.

Publication Date: March 8, 2010
Effective Dates: March 8, 2010
 through August 4, 2010
 (subject to s. 632.895 (12m) (f), Stats.)
Hearing Date: May 26, 2010

4. **EmR1020** — Rule adopted to revise **Chapter Ins 17**, relating to annual injured patients and families compensation fund fees and medical mediation panel fees for the fiscal year beginning July 1, 2010, and may have an effect on small business.

Finding of Emergency

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

These changes must be in place with an effective date of July 1, 2010 for the new fiscal year assessments. The fiscal year fees were established by the Board of Governors at a meeting on May 18, 2010.

Publication Date: June 15, 2010
Effective Dates: June 15, 2010
 through November 11, 2010
Hearing Date: July 19, 2010

Natural Resources (2)

Fish, Game, etc., Chs. NR 1—

1. **EmR1014** — Rule adopted to create **section NR 45.13 (1m) (d)**, relating to the establishment of a slow-no-wake zone on the Wisconsin River at the Dells of Wisconsin River state natural area.

Finding of Emergency

The Department of Natural Resources 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: Based on information received by the Department, user conflicts are increasing. Failure to enact this rule could lead to additional boating accidents and potential for injury during the upcoming high use season.

Publication Date: May 20, 2010
Effective Dates: May 20, 2010 through
 October 16, 2010
Hearing Date: June 22, 2010

2. **EmR1028** — Rule adopted to amend **s. NR 10.104 (7) (a)**, relating to the use of archery deer hunting licenses.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Deer populations are well below goal in much of northeast Wisconsin, causing great concern from hunters and others who value deer. This rule is one of the ways the department is trying to rebuild the populations there. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control and regulate hunting wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to approximately 250,000 archery deer hunters prior to the start of the season. These regulations must be legally

in effect prior to printing nearly 1 million copies of the regulations publication. The timeline for the permanent version of this rule will not have it in effect in time for these deadlines.

Publication Date: July 8, 2010
Effective Dates: July 8, 2010 through
 December 4, 2010

Natural Resources

Environmental Protection — Hazardous Waste Management, Chs. NR 600—

- EmR1007** — Rule adopted revising **section NR 660.10**, relating to hazardous waste management.

Exemption From Finding of Emergency

Section 289.67 (2) (de), Stats., as created by 2009 Wisconsin Act 28 (the 2009–2011 biennial budget bill), requires the department to promulgate by rule definitions of “large quantity generator” and “small quantity generator” for purposes of the hazardous waste generator fees established by s. 289.67 (2) (b) 1., Stats., as amended by 2009 Wisconsin Act 28.

Section 9137 (2), a non-statutory provision in 2009 Wisconsin Act 28, authorizes the department to promulgate the required definitions using emergency rule making procedures, but is not required to provide evidence that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Publication Date: March 17, 2010
Effective Dates: March 17, 2010 through
 July 1, 2011
Hearing Date: April 26, 2010

Public Defender Board

- EmR0926** — Rule adopted to create **Chapter PD 8**, Discovery Payments, relating to the maximum fees that the state public defender may pay for copies of discovery materials in criminal proceedings, proceedings under Chapter 980, Wis. Stats., and other proceedings in which the state public defender provides legal representation.

Finding of Emergency

These rules are promulgated under s. 227.24 (1) (a), Stats., because the magnitude of the shortfall in the state public defender’s appropriation for transcripts, discovery, and interpreters in both years of the current biennium constitutes an emergency that requires implementation of a rule earlier than a permanent rule could take effect if the agency were to comply with the applicable notice, hearing, legislative-review, and publication requirements.

The state public defender was initially provided a base budget of \$60,000 in 1995 for discovery payments, which at that time consisted mostly of photocopies and some photographs. In the 1999–2001 budget act, this appropriation was increased to \$150,000, based on a presumptive rate for photocopies of \$0.20 per page. In the 2001–2003 biennial budget act, this appropriation was subjected to a five percent funding reduction, leaving a base budget for discovery payments of \$142,500.

The public defender received discovery bills totaling \$717,000 for the fiscal year that ended June 30, 2009.

Although discovery costs are caseload driven, this represents a nearly five-fold increase since 2001 and is due primarily to two factors. First, in the past many counties and municipalities did not bill the state public defender for copies of discovery materials. Because local budgets have come under increasing pressure, most now do so. Second, 2005 Wisconsin Act 60 resulted in more widespread use of audio and video recordings of interrogations by law enforcement, copies of which must be provided to the defense.

The public defender board's requests for cost-to-continue budget increases for discovery payments in 2007–2009 and in 2009–2011 were not funded. Instead, the FY 2009–2011 budget act reduced this appropriation by 1%, leaving a base budget of \$141,100, and directed the board to promulgate rules to address the funding shortfall.

Publication Date: October 3, 2009
Effective Dates: October 3, 2009 through March 1, 2010
Extension Through: June 29, 2010
Hearing Date: November 16, 2009

Public Instruction (3)

1. **EmR1018** — Rule adopted to create **Chapter PI 45**, relating to the use of race-based nicknames, logos, mascots, and team names by school boards.

Finding of Emergency

Pursuant to Section 3 of the nonstatutory provisions of 2009 Wisconsin Act 250, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Publication Date: June 1, 2010
Effective Dates: June 1, 2010 through October 28, 2010
Hearing Date: July 29, 2010

(See the Notice in this Register)

2. **EmR1021** — Rule adopted to create **section PI 35.07**, relating to establishing a temporary, nonrenewable waiver from the requirement that a teacher have a bachelor's degree in order to teach in a private school under the Milwaukee Parental Choice Program.

Exemption From Finding of Emergency

Pursuant to Section 9139 (4r) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Publication Date: June 16, 2010
Effective Dates: June 16, 2010 through November 12, 2010
Hearing Date: July 12, 2010

3. **EmR1023** — Rule adopted creating **Chapter PI 43**, relating to education reform.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

2009 Wisconsin Act 215 requires the state superintendent to promulgate rules establishing criteria and procedures for determining whether a school or school district is in need of improvement and whether a school is among the lowest performing 5 percent of all public schools in the state. The Act became effective May 14, 2010 and review by the various interest groups was completed June 18, 2010. Rules must be in place as soon as possible to establish identification criteria prior to the upcoming school year.

Publication Date: June 28, 2010
Effective Dates: June 28, 2010 through November 24, 2010
Hearing Date: July 27, 2010

(See the Notice in this Register)

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

Publication Date: July 2, 2010
Effective Dates: July 2, 2010 through November 28, 2010

Revenue

EmR1002 — Rule adopted to create **section Tax 1.17**, relating to the ambulatory surgical center assessment.

Exemption From Finding of Emergency

The legislature by Section 9143 (4u) of 2009 Wisconsin Act 28 provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: January 19, 2010
Effective Dates: January 19, 2010 through June 16, 2010
 (Subject to 2009 Wis. Act 28, Section 9143 (4u))
Extension Through: August 15, 2010
Hearing Date: February 11, 2010

Technical College System Board

EmR1025 — Rule adopted to amend **Chapter TCS 17**, relating to training program grant funds.

Finding of Emergency

The Wisconsin Technical College System Board 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 an emergency is:

In May 2010, the Wisconsin C.O.R.E. Jobs Act provided an additional \$1 million GPR for the training program grants authorized in Wis. Stats. §§ 20.292 (1) (eh) and 38.41. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state's economic vitality and health, with a special emphasis on advanced manufacturing and welding.

The WTCS Board is required to award these funds by June 30, 2011, the end of the current 2009–11 biennium. In addition, s. TCS 17.06 (1), Wis. Adm. Code, requires that district boards or employers receiving skills training or education under the grant shall contribute matching funds, other than in-kind matching funds, equal to at least 25% of total approved project costs.

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

Transportation

EmR1017 — Rule adopted to create **section Trans 100.25**, relating to mandatory insurance exemptions.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public health and welfare. A statement of the facts constituting the emergency is the requirements of the mandatory insurance laws in Chapter 344, Stats., as created by 2009 Wis. Act 28, contain exceptions to furnishing proof of a motor vehicle liability insurance policy. This emergency rule defines the administration of those exceptions. These mandatory insurance requirements, and the exceptions, are effective June 1, 2010, thereby necessitating an emergency rule being put into place until the effective date of the permanent rule. Clarification of the mechanism to be used to qualify for an exception under the new statute will be useful to persons wishing to file for an exception. Persons whose religious beliefs preclude them from buying insurance will benefit from this rule making.

Publication Date: June 1, 2010
Effective Dates: June 1, 2010 through October 28, 2010
Hearing Date: June 24, 2010

Workforce Development

Labor Standards, Chs. DWD 270–279

EmR1011 — Rule adopted to create **Chapter DWD 273**, relating to the regulation of traveling sales crews.

Finding of Emergency

The Department of Workforce Development 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 facts constituting the emergency is:

The statute which provides for the regulation of traveling sales crews became effective on April 1, 2010. The Department has completed its work on the proposed administrative rule which implements the statute, and submitted the proposed rule in final form for legislative review on April 13, 2010. Putting the provisions of the proposed rule into effect during the legislative review period will allow the Department to take any enforcement action that might be needed if there are complaints during this period about the operation of traveling sales crews without the permits required by statute.

Publication Date: April 19, 2010
Effective Dates: April 19, 2010 through September 15, 2010

Scope Statements

Children and Families

Safety and Permanence, Chs. DCF 37–59

Subject

Revises Chapters DCF 52, 54, and 57, relating to rates charged by residential care centers, group homes, and child welfare agencies.

Policy Analysis

Effective January 1, 2011, under s. 49.343, Stats., as amended by 2009 Wisconsin Acts 28, 71, and 335, the department will establish the per client rate that a residential care center for children and youth or a group home may charge for its services, and the per client administrative rate that a child welfare agency may charge for the administrative portion of its treatment foster care services. In establishing rates for a placement specified in s. 938.357 (4) (c) 1. or 2., Stats., the department shall consult with the Department of Corrections. A residential care center for children and youth and a group home shall charge all purchasers the same rate for the same services and a child welfare agency shall charge all purchasers the same administrative rate for the same treatment foster care services. The department will determine the foster care levels of care to which this rate regulation applies.

By October 1, annually, a residential care center for children and youth or a group home shall submit to the department the per client rate that it proposes to charge for services provided in the next year and a child welfare agency shall submit to the department the proposed per client administrative rate that it proposes to charge for treatment foster care services provided in the next year. The department shall review the proposed rate and audit the provider submitting the proposed rate to determine whether the proposed rate is appropriate to the level of services to be provided, the qualifications of the provider to provide those services, and the reasonable and necessary costs of providing those services. In reviewing a proposed rate, the department shall consider all of the following factors:

- Changes in the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted.
- Changes in the consumer price index for all urban consumers, U.S. city average, for the medical care group, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted.
- Changes in the allowable costs of the residential care center for children and youth, group home, or child welfare agency based on current actual cost data or documented projections of costs.
- Changes in program utilization that affect the per client rate or per client administrative rate.
- Changes in the department's expectations relating to service delivery.

- Changes in service delivery proposed by the provider and agreed to by the department.
- The loss of any source of revenue that had been used to pay expenses, resulting in a lower per client rate or per client administrative rate for services.
- Whether the agency is accredited by a national accrediting body that has developed child welfare standards.
- Changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage.
- Competitive factors.
- The availability of funding to pay for the services to be provided under the proposed rate.
- Any other factor relevant to the setting of a rate that the department may determine by rule.

If the department determines that a proposed rate submitted is appropriate, the department shall approve the proposed rate. If the department does not approve a proposed rate, the department shall negotiate with the provider to determine an agreed to rate. If after negotiations a rate is not agreed to, the department and the provider shall engage in mediation under a rate resolution procedure promulgated by rule to arrive at an agreed to rate. If after mediation a rate is not agreed to, the department shall order a rate for the service after considering the factors listed above. A provider may appeal the rate set by the department as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order.

The department shall promulgate rules providing for all of the following:

- Standards for determining whether a proposed rate is appropriate to the level of services to be provided, the qualifications of a provider to provide those services, and the reasonable and necessary costs of providing those services.
- Factors for the department to consider in reviewing a proposed rate.
- Procedures for reviewing proposed rates, including procedures for ordering a rate when negotiations and mediation fail to produce an agreed to rate.

The department has created an advisory committee consisting of representatives of purchasers; county departments; the Bureau of Milwaukee Child Welfare; tribes; consumers; and a statewide association of private, incorporated family and children's social service agencies representing all groups of providers that are affected by the rate regulation process. The committee will advise the department on the development of the proposed rules and the implementation of rate regulation for residential care centers for children and youth, group homes, and child welfare agencies.

Statutory Authority

Sections 49.343 (4) and 227.11 (2), Stats.

Comparison with Federal Regulations

None.

Entities Affected by the Rule

Residential care centers for children and youth, group homes, child welfare agencies, counties, and tribes.

Estimate of Time Needed to Develop the Rule

500 hours.

Contact Information

Mary Morse
Child Welfare Licensing Section
Bureau of Permanence and Out-of-Home Care
Phone: (608) 266-0415
Email: mary.morse@wisconsin.gov

Commerce***Movable Soccer Goals, Ch. Comm 9
Plumbing, Chs. Comm 81-87*****Subject**

Creates Chapter Comm 9, relating to movable soccer goals and revises Chapters Comm 83 to 85, relating to private sewage systems.

Objective of the Rule

One objective of the potential rule-making projects is to establish or revise administrative rules regarding buildings, building components or structures affected by legislation enacted during the 2009-2010 legislative session. This includes mandates under:

- 2009 Wisconsin Act 390, regarding movable soccer goals.
- 2009 Wisconsin Act 392, regarding the inventory and maintenance of private sewage systems.

The rule-making project regarding private sewage systems may also involve technical revisions to address code inconsistencies and new technologies.

The objectives of these rule projects may be incorporated into more than one package and may include revisions to other chapters of department administrative rules affected by the proposal.

Policy Analysis

Under the statutory authority of chapters 101 and 145, Stats., the department has the responsibility to protect public health, safety and welfare in the design and construction of public buildings, places of employment and one- and 2-family dwellings and their components. The department has established building and construction codes that establish minimum standards for the protection of public health, safety and welfare.

Currently, the Department has no administrative rules governing soccer goals.

The primary alternative would be to delay the rule-making process. This delay would reduce the public benefits that would otherwise occur by beginning these projects now and would not be consistent with the implementation timelines mandated in the legislation.

Statutory Authority

Chapters 101, 145 and 167, Stats., as affected by 2009 legislation.

Comparison with Federal Regulations

The US Consumer Product Safety Commission has published Guidelines for Movable Soccer Goal Safety, January 1995, publication #CPSC 326.

There are two existing federal regulations that address some aspects of private sewage systems, 40 CFR 144.80(e) and 40 CFR Part 122. Under federal regulations private sewage systems are classified as Class V Wells, Shallow Injection Wells and large private sewage systems require National Pollutant Discharge Elimination System (NPDES) permits which are currently administered by the Department of Natural Resources under its Wisconsin Pollutant Discharge Elimination System (WPDES) program.

There are no existing or proposed federal regulations that would address the matters that are regulated under this rule-making project.

Entities Affected by the Rule

The rule project pertaining to soccer goals will affect public and private entities that own or utilize soccer goals for the activities; this would include public and private schools and soccer clubs and associations.

The rule project pertaining to private sewage systems will affect public and private entities that own private sewage systems or are involved in program administrative functions such as soil testing, design, construction, inspection and maintenance.

Estimate of Time Needed to Develop the Rule

The department estimates it will take approximately 200 hours to develop the rules pertaining to soccer goals. This time includes reviewing national standards, drafting the rules and processing the rules through public hearings, legislative review and adoption. The department will assign existing staff to undertake this rule-making project.

The department estimates it will take approximately 400 hours to develop the rules pertaining to private sewage systems. This time includes reviewing current rules, drafting the rules and processing the rules through public hearings, legislative review and adoption. The department will assign existing staff to undertake this rule-making project.

Commerce***Financial Resources for Businesses and Communities,
Chs. Comm 100—*****Subject**

Creates Chapter Comm 103, relating to the Disabled Veteran-Owned Business Certification program.

Objective of the Rule

The proposed rules would implement the provisions of 2009 Wisconsin Act 299. The rules will establish the eligibility criteria and process for obtaining certification under the disabled veteran-owned business certification program.

Policy Analysis

The Department currently operates the Minority Business Certification Program and the Woman-Owned Business Certification Program. The proposed rules for the Disabled Veteran-Owned Business Certification program will be similar to the structure of the rules for these two programs.

Under the proposed rules, as required by 2009 WI Act 299, the Department would certify Wisconsin businesses that are

at least 51 percent owned, controlled, and actively managed by disabled veterans. The Department may establish a processing fee to cover the department's expenses in making the certification determination. Alternatively, the Department may seek to enter into a Memorandum of Understanding (MOU) with the Wisconsin Department of Veterans Affairs (DVA) to operate the certification program. The Department is required to promulgate rules to implement the provisions of 2009 WI Act 299.

Statutory Authority

Sections 560.033 (3) (c) and (4) of the Statutes as created by 2009 Wisconsin Act 299.

Comparison with Federal Regulations

Title 13 of the *Code of Federal Regulations*, Part 25, Subparts A thru E, address the definitions, eligibility requirements, contracting requirements, protest procedures, and penalties and records retention requirements under the federal Small Business Administration Service–Disabled Veteran–Owned (SDVO) Small Business Concern (SBC) Program. The purpose of the SDVO SBC Program is to assist small businesses in obtaining a fair share of Federal Government contracts, subcontracts, and property sales. An SDVO SBC is one in which at least 51% of the business is owned, controlled, and actively managed by service–disabled veterans, or in the case of a veteran with a permanent and severe disability, a spouse, surviving spouse, or permanent caregiver of the veteran. The SDVO SBC must also meet the small size standards corresponding to the NAICS code assigned to the contract at the time of the contract offer. Verification eligibility is for a 12–month period.

Title 38 of the *Code of Federal Regulations*, Part 74, addresses the application guidelines, oversight and records management requirements of the U.S. Department of Veterans Affairs (VA) Center for Veterans Enterprise (CVE) VetBiz Vendor Information Pages (VIP) database. Eligibility criteria for the CVE VIP are based on ownership and control, and the absence of: (a) debarment or suspension concerns; (b) false application statements; and (c) significant unresolved financial obligations to the Federal Government. Applications for the VetBiz VIP verification status must be filed electronically in the VIP database located at <http://www.VetBiz.gov>.

Entities Affected by the Rule

The rules may affect disabled veteran–owned businesses in Wisconsin, private– and public–sector entities with supplier–diversity programs that relate to disabled veteran–owned businesses, any state agencies or other entities required to ensure that a portion of orders or contracts are paid or awarded to disabled veteran–owned businesses, and any state agencies or other entities required to submit annual reports to the Department of Administration on these orders or contracts.

Estimate of Time Needed to Develop the Rule

The staff time necessary to develop the rules is expected to range from 80 to 100 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption in collaboration with the Wisconsin Department of Veterans Affairs. There are no other resources necessary to promulgate the rules.

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100—

Subject

Creates Chapter Comm 135, relating to food processing plant and food warehouse investment credit.

Objective of the Rule

The proposed rules would implement the provisions of 2009 Wisconsin Act 295 that relate to certifying applicants and allocating to them tax credits for investments in food processing plants and food warehouses.

Policy Analysis

The Department has rules for several other programs associated with tax credits, but none of those programs relate specifically to investments in food processing plants and food warehouses.

The proposed rules are expected to address: (1) the eligibility requirements for applicants; (2) the documentation that must be submitted by applicants to become certified as eligible for the investment credit, and to receive acceptance of incurred expenses; (3) the Department's response to the submitted documentation; and (4) filing a claim with the Department of Revenue for the corresponding tax credit.

The alternative of not promulgating these rules would conflict with the directive in section 560.2056 (4) of the Statutes that requires this promulgation, in consultation with the Department of Revenue.

Statutory Authority

Sections 227.11 (2) (a) and 560.2056 (4), Stats.

Comparison with Federal Regulations

Neither the Department nor the Department of Revenue is aware of any existing or proposed federal tax credits that are similar to these tax credits.

Entities Affected by the Rule

The proposed rules may affect entities that incur expenses relating to modernization or expansion of food processing plants or food warehouses.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rules is expected to range from 40 to 60 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100—

Subject

Creates Chapter Comm 139, relating to rural outsourcing grants.

Objective of the Rule

The proposed rules would implement the provisions of 2009 Wisconsin Act 265 that relate to awarding grants to businesses for outsourcing work to rural municipalities.

Policy Analysis

The Department has rules for several other programs associated with economic and business development grants, but those programs are not targeted specifically to grants to businesses for outsourcing work to rural municipalities.

The proposed rules are expected to address (1) the eligibility requirements for applicants and projects; (2) the documentation that must be submitted by applicants; (3) the Department's response to the submitted documentation; and (4) the Department's use of any funds that are not applied for by the end of the 2009–11 fiscal biennium.

The alternative of not promulgating these rules would conflict with the directive in SECTION 45 (1) (b) in 2009 Wisconsin Act 265 that requires this promulgation.

Statutory Authority

Section 227.11 (2) (a), Stats., and Section 45 (1) (b) in 2009 Wisconsin Act 265.

Comparison with Federal Regulations

No similar existing or proposed federal regulations or programs were found through review of the Code of Federal Regulations and pertinent federal agency Web sites – including at the US Department of Agriculture, the US Department of Commerce, the US Economic Development Administration, and the US Small Business Administration.

Entities Affected by the Rule

The proposed rules may affect businesses that incur expenses relating to outsourcing work to rural municipalities.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rules is expected to range from 40 to 60 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Health Services

*Management and Technology and Strategic Finance,
Chs. DHS 1—
Community Services, Chs. DHS 30—
Health, Chs. DHS 110—*

Subject

Revises Chapter DHS 12, relating to caregiver background checks and Appendix A, relating to offenses affecting caregiver eligibility.

Revises Chapter DHS 83, relating to community-based residential facilities.

Revises Chapter DHS 88, relating to licensed adult family homes.

Revises Chapter DHS 124, relating to hospitals.

Revises Chapter DHS 127, relating to rural medical centers.

Revises Chapter DHS 148, relating to cancer and chronic disease drug repository program.

Repeals Chapter DHS 165, relating to laboratory certification.

Objective of the Rule

To update, correct or remove outdated rule provisions and cross-references.

Policy Analysis

DHS 12

Chapter DHS 12, Appendix A is a list of Wisconsin crimes and other offenses that the legislature under s. 50.065, Stats., determined either require rehabilitation review approval before a person may work as a caregiver, reside as a non-client resident at or contract with an entity, or that act to permanently bar a person from receiving approval to be a foster parent. Over the years, the legislature has revised the crimes and offenses listed in s. 50.065, Stats., making Appendix A incomplete and outdated. To ensure that the list of crimes and offenses now listed by the department in Appendix A is available to the public in an accurate and timely manner, the department intends to repeal Appendix A and publish the list of crimes and offenses affecting caregiver eligibility on the department's website at dhs.wisconsin.gov.

The department intends to update the list of entities, as defined under s. 50.065, which are subject to the caregiver background law, make other minor changes, and clarify rule provisions.

DHS 83

The department intends to amend ch. DHS 83 to clarify and correct certain provisions in the rule relating to health monitoring, administrator training, resident assessment, doors and construction type, make other minor changes, clarify rule provisions and to update charts, references and links.

DHS 88

2007 Wisconsin Act 20 repealed ss. 50.033 (2r), (2s) and (2t), Stats., making the provisions in ss. DHS 88.06 (1) (a) 4. and (4) no longer valid. Chapter DHS 88.06 (1) (a) 4. and (4) requires an adult family home to provide information and referral of a prospective resident to the aging and disability resource center. These requirements were repealed under 2007 Wisconsin Act 20. The department intends to remove the information and referral requirements from ch. DHS 88.

Section DHS 88.10 (5) (b) relating to resident grievance procedures contains an incorrect cross-reference concerning patient storage space. The department intends to correct the cross-reference.

DHS 124

Section DHS 124.14 (3) (a) 16. relating to anatomical gifts contains a cross-reference to s. DHS 124.05 (3) (i) 1. which was repealed in a recent revision of ch. DHS 124. The department intends to correct the cross reference.

DHS 127

Chapter DHS 127.02 (2) defines an ambulatory surgery center to have the meaning given in s. 49.45 (6r) (a) 1., Stats. 1997 Wisconsin Act 252 repealed s. 49.45 (6r), Stats., making the definition no longer valid. The department intends to amend the definition of ambulatory surgical center at s. DHS 127.02 (2), by adopting the federal definition given under 42 CFR 416.2, which defines an ambulatory surgical center (ASC) to mean any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, has an agreement with the Centers of Medicare and Medicaid Services (CMS) to participate in Medicare as an ASC, and meets the conditions set forth in subparts B and C. Subparts B and C of 42 CFR 416.2 are the

general conditions, requirements and specific conditions for coverage for ambulatory surgical services.

DHS 148

2009 Wisconsin Act 142, effective March 18, 2010, removes certain barriers to donating prescription drug samples and expands the drug repository program to allow individuals to donate unused prescription medications that are in the original packaging, not just drugs to treat cancer and other chronic diseases as previously specified. The department intends to amend ch. DHS 148 to reflect these changes.

DHS 165

The Department proposes to repeal ch. DHS 165 because the department has no statutory authority for the rule. In Wisconsin, laboratories are monitored under federal regulations contained in 42 CFR 493 and 42 CFR 1310 to 405.1317.

Statutory Authority

Sections 50.02 (2), 50.033 (2), 50.065 (1) (ag) 1. a., (2) (d), (4), (5) and (6) (b) and (c), 50.36 (1), 50.51 (2), 227.11 (2), and 255.056 (7), Stats.

Comparison with Federal Regulations

Chapter DHS 12, Caregiver Background Checks. There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

Chapter DHS 83, Community–Based Residential Facilities. There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

Chapter DHS 88, Licensed Adult Family Homes. There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

Chapter DHS 124, Hospitals. There appear to be no existing or proposed federal regulations that address clinical records to be maintained for anatomical gifts.

Chapter DHS 127, Rural Medical Centers. There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

Chapter DHS 148, Cancer and Chronic Disease Drug Repository Program. The proposed rules are affected by 21 CFR 200–299, 21 CFR 1300–1302, and 21 CFR 1304–1308. These regulations constitute the Food and Drug Administration (FDA) and Drug Enforcement Agency (DEA) regulations that will affect the type of medications that can be donated to the drug repository.

Chapter DHS 165, Laboratory Certification. Similar federal regulations are contained in the 42 CFR 493 and 42 CFR 1310 to 405.1317.

Entities Affected by the Rule

The proposed rule will affect community–based residential facilities, adult family homes, hospitals, rural medical centers, pharmacists, pharmacies, advocacy organizations, trade associations, and entities regulated under chs. DHS 34, 35, 36, 40, 61, 63, 75, 82, 83, 85, 88, 89, 105, 124, 127, 131, 132, 133, and 134.

Estimate of Time Needed to Develop the Rule

The Department of Health Services estimates that approximately 100 hours of staff time will be required to promulgate the proposed rules.

Contact Information

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Health Services

Health, Chs. DHS 110—

Subject

Revises Chapter DHS 120, relating to health information.

Objective of the Rule

To create rules governing how individually identifiable cancer registry information may be disclosed to persons conducting research on cancer, cancer prevention or cancer control.

Policy Analysis

Section 255.04 (3) (c), Stats., as created by 2009 Wisconsin Act 28 (the state’s biennial budget) permits the dissemination of individually identifiable state cancer registry information to qualified researchers upon request. The request must include a written application, documentation of IRB approval and fee payment to the department, for the purpose of studying cancer, cancer prevention, or cancer control or performing other cancer research.

Previously, disclosure of this information outside the Department of Health Services was limited to a central tumor registry in another state when the subject of the information resides in that state, or to a national tumor registry.

The department intends to propose rules to specify the procedures the department intends to use to assess researchers’ applications for cancer registry information, and the fee structure or basis of the fees to be charged researchers to obtain this cancer registry information.

Statutory Authority

Sections 227.11 (2) and 255.04, Stats.

Comparison with Federal Regulations

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rules. However, the 1992 Cancer Registries Amendment Act (Public Law 102–515) established the National Program of Cancer Registries (NPCR), currently regulated within the Centers for Disease Control and Prevention, Department of Health and Human Services. PL 102–515 (2) (D) (vi) requires that the funding recipient’s State law and associated administrative rules authorizes a means by which confidential case data may, in accordance with State law, be disclosed to cancer researchers for the purposes of cancer prevention, control and research. Section 255.04, Stats., and the Department’s proposed administrative rules are intended to comply with this federal law.

In applying for and accepting NPCR grant funding for the cancer registry, Wisconsin agreed to provide the assurances required under PL 102–515 (2), including the specific assurance on data release mentioned above.

Entities Affected by the Rule

The proposed rule will affect those that meet the statutory requirements under s. 255.04 (3) (c), Stats. These entities include:

1. Research universities with an approved federal–wide assurance Institutional Review Board (IRB.)
2. Hospitals with an approved federal–wide assurance IRB, or obtained approval from an institution that houses such an IRB.

3. National and state cancer organizations (such as the American Cancer Society) with an approved federal-wide assurance IRB, or obtained approval from an institution that houses such an IRB.
4. Private research institutes (such as Westat, RTI or the National Opinion Research Center) with an approved federal-wide assurance IRB, or obtained approval from an institution that houses such an IRB.
5. Private researchers who obtained approval from a federal-wide assurance IRB.

Estimate of Time Needed to Develop the Rule

The Department of Health Services estimates that approximately 75 hours will be needed.

Contact Information

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Public Service Commission

Subject

Revises Chapter PSC 118, relating to renewable resource credits.

Objective of the Rule

This rulemaking will revise ch. PSC 118 to reflect changes found in 2009 Wis. Act 406 regarding renewable resource credits.

Policy Analysis

2009 Wis. Act 406 revises s. 196.378, Stats., regarding the creation of renewable resource credits by electric providers, and the inclusion in the renewable portfolio standard of resources that generate electric power from certain kinds of fuel, synthetic gas, or fuel pellets.

Statutory Authority

Sections 196.02 (3), 227.11 (2), and 196.378 (3) (a) 1m., Stats. (2009 Wis. Act 406, Section 5).

Comparison with Federal Regulations

Various federal regulations concern renewable energy, but the commission is not aware of any existing or proposed federal regulation in this specific area.

Entities Affected by the Rule

The rulemaking will affect all electric providers and wholesale suppliers. It may also affect the members or customers of an electric provider or a wholesale supplier.

Estimate of Time Needed to Develop the Rule

The commission estimates that approximately 500 hours of commission staff time will be required in this rulemaking. Commission staff may meet and consult with staff from other state agencies and members of the public during the course of this rulemaking.

Technical College System Board

Subject

Revises section TCS 17.06, relating to training program grants.

Objective of the Rule

Chapter TCS 17 relates to training grants for technical college districts that provide skills training or other education related to the needs of business. A 25% match is required as a condition of the grant awards. The proposed amendment would eliminate the match requirement.

Policy Analysis

Not applicable.

Statutory Authority

Section 38.41, Stats.

Comparison with Federal Regulations

Not applicable.

Entities Affected by the Rule

Wisconsin Technical Colleges or employers receiving funding under the grant.

Estimate of Time Needed to Develop the Rule

Minimal time will be spent and no additional resources will be needed.

Contact Information

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Transportation

Subject

Revises Chapter Trans 132, relating to the temporary operation plate.

Objective of the Rule

Section 341.09, Stats., authorizes the Department of Transportation (DOT) to issue temporary operation plates or permits. This section provides that DOT shall specify the size, color, design, form and specifications for temporary operation plates, which DOT does in ch. Trans 132. Trans 132 also specifies that the temporary operation plate shall be displayed on the rear of the vehicle.

Section 341.04 (1), Stats., requires an automobile or light truck (8,000 pounds or less) to display either a metal license plate or a temporary operation plate within 2 business days of the vehicle's sale or transfer.

The Division of Motor Vehicles (DMV) within DOT is developing an online program which will allow the public to apply for and receive title and registration for automobiles, light trucks (8,000 pounds or less) and motorcycles purchased through private (non-dealer) sales. To comply with s. 341.04 (1), Stats., DMV will issue a temporary operation plate that the online program prints on paper at the applicant's printer, and shall be displayed in the rear window of the vehicle. The temporary operation plate number, vehicle description, and owner information will be available to law enforcement, real time and online.

This rule making amends ch. Trans 132 to specify size, color, design, form and specifications for temporary

operation plates that DMV issues through the online program, and to specify display, usage, restrictions, and other similar requirements for this temporary operation plate.

Policy Analysis

Currently, DMV issues only a cardboard temporary operation plate. The temporary operation plate must be issued by hand or by mail from DMV inventory. With an online title and registration process, DMV must be able to issue a temporary operation plate immediately to a person after the person completes the online process. Otherwise, the registrant may not legally operate the vehicle until the metal plate arrives.

DMV has considered alternative ways to immediately provide a temporary operation plate to online title and registration customers. We considered mailing a cardboard temporary operation plate, but that would be only slightly quicker than mailing the metal plate. We considered requiring the customer to come to a DMV service center to obtain a temporary operation plate, but that defeats the benefit of online program – the customer might as well have DMV staff process the application and immediately obtain a metal plate.

DMV has concluded that a temporary operation plate printed on paper at the customer's printer and displayed in the rear window of the vehicle meets the requirement under s. 341.04, Stats. Since the temporary operation plate number and vehicle and owner identifying information will be available real time online to law enforcement, DMV has concluded that the risk of fraud or counterfeiting is minimized.

Statutory Authority

Sections 85.16 (1), 227.11, and 341.09 (1) (b), Stats.

Comparison with Federal Regulations

No federal regulations apply to activities to be regulated by the proposed rule.

Entities Affected by the Rule

Any Wisconsin citizen who purchases a motor vehicle in a private (non–dealer) sale, and needs a temporary operation plate.

Law enforcement personnel will need to know about display and online look–up of vehicle and owner information.

DMV agents that provide intake of completed vehicle title and registration applications and issue temporary operation plates.

Estimate of Time Needed to Develop the Rule

80 hours.

Transportation

Subject

Revises Chapter Trans 178, relating to the Unified Carrier Registration Agreement.

Objective of the Rule

Ch. Trans 178 establishes provisions related to fees for motor carriers under the Unified Carrier Registration Agreement, consistent with federal law and regulation. Federal law and regulation changed the fee schedule beginning with 2010 fees, and also removed towed vehicles from the definition of commercial motor vehicle for the purpose of the Unified Carrier Registration program. As provided in s. Trans 178.03 (2), the new fee schedule became

effective in Wisconsin May 27, 2010. This rule making will replace the obsolete fee schedule with the new fee schedule and will eliminate the reference to towed vehicles in the definition of commercial motor vehicle [s. Trans 178.02 (2)], to conform with federal law.

Policy Analysis

Ch. Trans 178 conforms to federal law and regulation regarding Unified Carrier Registration definitions, eligibility, fee structure and schedule. Originally, UCR included towed vehicles (trailers) in the definition of commercial motor vehicles for the purposes of UCR; subsequently, federal law eliminated towed vehicles from the definition. In addition, federal regulation changed the fee schedule, beginning with 2010 fees. As provided in s. Trans 178.03 (2), the new fee schedule became effective in Wisconsin May 27, 2010. Ch. Trans 178 needs to be updated to reflect the new fee schedule and the removal of towed vehicles from the definition of commercial motor vehicle for purposes of UCR.

Statutory Authority

Section 194.407, Stats.

Comparison with Federal Regulations

Ch. Trans 178 must conform to federal law and regulation related to the Unified Carrier Registration Agreement, and this rule making will update the rule to conform to changes in federal law and regulation.

Entities Affected by the Rule

Motor carrier fleets, brokers, freight forwarders that are subject to Unified Carrier Registration Agreement fee payments.

Estimate of Time Needed to Develop the Rule

40 hours.

Transportation

Subject

Revises Chapter Trans 300, relating to safety–related standards for school buses.

Objective of the Rule

Chapter Trans 300 governs and sets the standards for safe transportation of pupils and other authorized persons on school buses. It provides specific safety–related standards regarding the design, construction, inspection and operation of school buses. There have been a number of updates in the school bus industry as it relates to technology and manufacturing standards. Rule changes are needed to address these updates. Some of the proposed revisions relate to:

- Mounting of video and audio recorders, currently addressed in s. Trans 300.81.
- Authorized optional equipment (e.g., navigation and passenger detection devices; laptop computers; theft detection devices; storage containers, AEDs, blood–born pathogen kits, hand sanitizer) currently in s. Trans 300.81.
- Interior and exterior lettering, adding optional and required lettering, currently addressed in ss. Trans 300.39 and 300.61.
- Additions to the exhaust system, currently addressed in s. Trans 300.40 and 49 CFR 393.83.
- Changes to lighting, lamps and reflector requirements, currently addressed in s. Trans 300.54 and SAE J887. Intended to develop regulations regarding the eight–light

warning system and establish a time frame for implementation. Clarify flash rate of a strobed warning light. Develop language for background color of eight-light warning system.

- Changes in color and trim color requirements, currently addressed in s. Trans 300.34. Intended to remove paint requirement for rub rails and stop arm brackets. Intended to include back up lamp as an acceptable light to have a black background.
- Changes in warning light activation to eight light system, currently addressed in s. Trans 300.16 (8) and (9), and ss. 346.48 and 349.21, Stats.
- Clarify pre-trip inspection and add requirements of employer and driver responsibilities; also clarify reporting requirements, currently addressed in ss. Trans 300.15 and 300.16.
- Safety belt installation—require compliance with FMVS22 for voluntary safety belt installation not currently addressed in ch. Trans 300. Section Trans 300.59 and FMVSS 222.

- Specify location of book racks, currently addressed in s. Trans 300.30.

Policy Analysis

Recent technology and industry manufacturing changes require that ch. Trans 300 be revised and updated.

Statutory Authority

Sections 85.16 (1), 110.06 (2), 110.064 (1) (b) and 227.11 (2), Stats.

Comparison with Federal Regulations

The changes being proposed will conform to any federal regulations that exist in Title 49, Code of Federal Regulations, and industry standards in the Society of Automotive Engineers reference manual that pertain.

Entities Affected by the Rule

Wisconsin-based school buses and the industry that manufacturers and operates them would be affected by changes to this rule.

Estimate of Time Needed to Develop the Rule

200 hours.

Submittal of Rules to Legislative Council Clearinghouse

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

Children and Families

Family and Economic Security, Chs. DCF 101–153

CR 10–078

On June 29, 2010, the Department of Children and Families submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter DCF 110, relating to transitional jobs for low-income adults.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 5, 2010. The Department's Division of Family and Economic Security is responsible for promulgation of the proposed rules.

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Children and Families

Early Care and Education, Chs. DCF 201–252

CR 10–086

On July 1, 2010, the Department of Children and Families submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter DCF 201, relating to child care subsidy program integrity.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 6, 2010. The Department's Division of Early Care and Education is responsible for promulgation of the proposed rules.

Contact Information

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Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100—

CR 10–079

On June 30, 2010, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter Comm 106, relating to the Wisconsin Development Fund.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 10, 2010. The Department's Division of Business Development is responsible for promulgation of the proposed rules.

Contact Information

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Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100—

CR 10–080

On June 30, 2010, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter Comm 126, relating to the Wisconsin Venture Fund.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 10, 2010. The Department's Division of Business Development is responsible for promulgation of the proposed rules.

Contact Information

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Health Services

Health, Chs. DHS 110—

CR 10–084

On July 1, 2010, 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 138, relating to subsidy of health insurance premiums for persons with HIV infection.

Agency Procedure for Promulgation

The Department of Health Services will adopt the rule, as proposed, without public hearing unless within 30 days after publication of the Notice in this Wisconsin Administrative Register on July 14, 2010, the Department is petitioned for a

public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

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 10-085

On July 1, 2010, the Department of Health Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters DHS 110 to 113 and 119, relating to emergency medical services, including first responders, emergency medical technicians (EMTs), first responder service providers, non-transporting EMT service providers, and ambulance service providers.

Agency Procedure for Promulgation

Public hearings are scheduled for August 2, 4, 5, and 6, 2010.

Contact Information

For substantive questions on rules, contact:

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Insurance CR 10-076

On June 23, 2010, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises sections Ins 6.05 and 6.07, relating to filing of insurance forms and insurance policy language simplification, and affects small business.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 27, 2010.

Contact Information

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams, OCI
Public Information and Communications
Phone: (608) 264-8110

For additional information, please contact:

Julie E. Walsh, OCI Legal Unit
Phone: (608) 264-8101

Email: julie.walsh@wisconsin.gov

Insurance CR 10-077

On June 28, 2010, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section Ins 51.01, relating to the risk-based capital of health insurers, property and casualty insurers, and fraternal insurers.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 3, 2010.

Contact Information

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams, OCI
Public Information and Communications
Phone: (608) 264-8110

For additional information, please contact:

James W. Harris, OCI Legal Unit
Phone: (608) 267-2833

Email: james.harris@wisconsin.gov

Public Instruction CR 10-074

On June 16, 2010, the Department of Public Instruction submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter PI 45, relating to the use of race-based nicknames, logos, mascots, and team names by school boards.

Agency Procedure for Promulgation

A public hearing is scheduled for July 29, 2010. The Department's Division for Learning Support: Equity and Advocacy is primarily responsible for promulgation of the proposed rules.

Contact Information

Carolyn Stanford Taylor, Administrator
Division for Learning Support: Equity and Advocacy
Phone: (608) 266-1649
Email: carolyn.stanfordtaylor@dpi.wi.gov

Public Instruction
CR 10-075

On June 21, 2010, the Department of Public Instruction submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter PI 43, relating to education reform.

Agency Procedure for Promulgation

A public hearing is scheduled for July 27, 2010. The Office of the State Superintendent is primarily responsible for promulgation of the proposed rules.

Contact Information

Scott Jones, Special Assistant
Office of the State Superintendent
Phone: (608) 267-9269
Email: burton.jones@dpi.wi.gov

Public Instruction
CR 10-083

On June 30, 2010, the Department of Public Instruction submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order amends Chapter PI 34, relating to educator preparation and licensing flexibility.

Agency Procedure for Promulgation

Public hearings are scheduled for July 23 and August 4, 2010. The Department's Division for Academic Excellence is primarily responsible for promulgation of the proposed rules.

Contact Information

Deborah Mahaffey
Assistant State Superintendent
Phone: (608) 266-3361
Email: deborah.mahaffey@dpi.wi.gov

Regulation and Licensing
CR 10-081

On June 30, 2010, 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 RL 7, relating to the impaired professionals procedure.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 6, 2010.

Contact Information

Pamela Haack, Paralegal
Office of Legal Counsel
Phone: (608) 266-0495
Email: Pamela.haack@wisconsin.gov

Transportation
CR 10-082

On June 30, 2010, the Department of Transportation submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter Trans 75, relating to bikeways and sidewalks in highway projects.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 4, 2010. The Department's Division of Transportation Investment Management, Planning and Economic Development is responsible for promulgation of the proposed rule.

Contact Information

Julie A. Johnson, Paralegal
Phone: (608) 267-3703
Email: Julie1.Johnson@dot.wi.gov

Rule-Making Notices

Notice of Hearing Children and Families

Family and Economic Security, Chs. DCF 101–153 EmR1024, CR 10–078

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.162 (3) (c) and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold a public hearing to consider emergency rules and proposed permanent rules creating Chapter DCF 110, relating to transitional jobs for low-income adults and affecting small businesses.

Hearing Information

Date: Thursday, August 5, 2010
Time: 1:30 p.m.
Location: MADISON
 GEF 1 Building, Room H206
 201 E. Washington Avenue

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

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

Copies of Proposed Rules and Submittal of Written Comments

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

Elaine Pridgen, Office of Legal Counsel
 Department of Children and Families
 201 E. Washington Avenue
 Madison, WI 53707
 Phone: (608) 267-9403
 Email: dcfpublichearing@wisconsin.gov

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than **August 6, 2010**, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by the Department of Children and Families

Statutory authority

Sections 49.162 (3) (c) and 227.11 (2) (a), Stats.

Statutes interpreted

Section 49.162, Stats., as created by 2009 Wisconsin Act 28 and affected by 2009 Wisconsin Act 333.

Explanation of agency authority

Section 49.162, Stats., as created by 2009 Wisconsin Act 28, provides that the department shall conduct a demonstration project that offers transitional jobs to low-income adults. The department shall seek federal funds to pay for the cost of operating the demonstration project and may conduct the project only to the extent that the department obtains federal funds. Section 49.162, (3) (c), Stats., provides that the department shall promulgate rules for the operation of the demonstration project.

2009 Wisconsin Act 333 amends s. 49.162, Stats., if the department determines that expanding the transitional jobs program as provided in Act 333 is the preferred mechanism for obtaining some or all of the federal funding under the TANF Emergency Contingency Fund of the American Recovery and Reinvestment Act of 2009 (ARRA). The department must publish a notice in the *Wisconsin Administrative Register* that states the date on which the department made that determination. The changes to s. 49.162, Stats., in Act 333 are effective on the date that the department made the determination. The changes in Act 333 are effective July 1, 2010.

Act 333 provides that the department shall publish a second notice in the *Wisconsin Administrative Register* when federal funding under the TANF Emergency Contingency Fund is no longer available. The changes to s. 49.162, Stats., in Act 333 are repealed when the federal funding may no longer be obtained. ARRA currently provides that funding under the TANF Emergency Contingency Fund may no longer be obtained after September 30, 2010.

Summary of the rules

The proposed rules will allow the department to conduct a demonstration project that provides subsidized, wage-paying transitional jobs and supportive services to low-income adults. The purpose of the transitional jobs demonstration project is to provide low-income adults with immediate income and the opportunity for the development of basic skills, appropriate work habits, a positive work history, and longer-term career preparation with the goal that they will be more likely to obtain and maintain unsubsidized employment.

An individual may be eligible to participate in the transitional jobs demonstration project only if all of the following criteria are met:

- The individual is at least 21 but not more than 64 years of age.
- The individual is not eligible to receive a Wisconsin Works grant.
- The individual has been unemployed for at least the 4 prior calendar weeks.

- The individual is not eligible to receive unemployment insurance benefits.
- The individual’s annual household income is below 150 percent of the federal poverty line.
- If the employment of an individual as a transitional worker is expected to be subsidized by the Temporary Assistance for Needy Families program, the individual shall be one or more of the following at the time of eligibility determination:
 - Less than 25 years of age.
 - The biological or adoptive parent of a child under the age of 18.
 - A primary relative caregiver for a child under the age of 18.

An individual may participate in the transitional jobs demonstration project for a maximum of 1,040 hours of orientation, subsidized work, and training.

A contractor shall conduct periodic orientations for individuals that the contractor has determined are eligible to participate in the transitional jobs demonstration project. During the orientation, the contractor shall encourage and assist eligible individuals to recognize their strengths, assets, aspirations, resilience, and potential to achieve economic stability; identify and address barriers to employment; and develop an individualized plan for obtaining unsubsidized employment.

A contractor is the employer of a transitional worker and shall pay the transitional worker’s wages; the employer’s share of federal Social Security and Medicare taxes; unemployment insurance contributions or taxes, if any; and worker’s compensation insurance premiums, if any. A contractor may subcontract these responsibilities with prior approval by the department. Wages shall be paid at not less than the minimum wage for hours working at a work site and at the minimum wage for hours participating in orientation and training.

A transitional worker may be part of a work crew that goes to different work sites under the supervision of a contractor or may be individually placed with a host. If a transitional worker is placed with a host, the host shall assign a supervisor to oversee the transitional worker’s daily responsibilities; assist the transitional worker with the proper completion of time sheets; and communicate with the contractor regarding issues arising in the workplace and the progress of the transitional worker in developing basic skills, appropriate work habits, a positive work history, and longer–term career preparation.

The contractor and host of a transitional worker shall ensure that the employment of a transitional worker does not have the effect of filling a vacancy created by an employer terminating a regular employee or otherwise reducing its work force for the purpose of hiring a transitional worker, filling a position when any other person is on layoff or strike from the same or a substantially equivalent job within the same organizational unit, or filling a position when any other person is engaged in a labor dispute regarding the same or a substantially equivalent job within the same organizational unit.

A contractor may provide education and training to a transitional worker directly or by subcontract with local training providers if the transitional worker is working at least 20 hours per week in a transitional job and the combined hours of the transitional job and participation in education and

training do not exceed 40 hours per week. The education and training provided shall be consistent with the transitional worker’s plan for obtaining unsubsidized employment and complementary to the transitional worker’s transitional job.

A contractor may provide to a current or former transitional worker economic and non–economic incentives and supports, including training stipends, uniform allowances, assistance in obtaining a driver’s license, parenting support groups, earnings supplements, and retention bonuses. An economic incentive or support shall assist a current or former transitional worker obtain or maintain unsubsidized employment.

A contractor shall provide a transitional worker with activities and resources that assist the transitional worker’s search for unsubsidized employment. A contractor shall monitor a former transitional worker during his or her first 6 months of unsubsidized employment to assist with job retention and advancement, unless the contractor’s contract to operate a transitional jobs program has ended.

The department shall reimburse a contractor for wages paid to transitional workers at the minimum wage rate for each hour actually worked; the employer’s share of federal Social Security and Medicare taxes; unemployment contributions or taxes, if any; and worker’s compensation insurance premiums, if any. The department may reimburse a contractor for expenditures incurred by the contractor related to operating a transitional jobs program, including the costs of orientation, supervision, training, and providing job supports to current and former transitional workers.

Comparison with federal regulations

The American Recovery and Reinvestment Act of 2009 created the TANF Emergency Contingency Fund under which states can receive 80% federal funding for spending increases in federal fiscal years 2009 and 2010 over federal fiscal years 2007 or 2008 in certain categories of TANF–related expenditures. The three categories are basic assistance, non–recurrent short–term benefits, and subsidized employment.

TANF is a federal block grant that provides states with funds that can be used for a wide range of activities that are aimed at any of the four purposes of TANF:

- Assisting needy families so that children can be cared for in their own homes.
- Reducing the dependency of needy parents by promoting job preparation, work and marriage.
- Preventing out–of–wedlock pregnancies.
- Encouraging the formation and maintenance of two–parent families.

Guidance issued by the Administration for Children and Families (ACF) on the TANF Emergency Contingency Fund states that under limited circumstances an adult without a dependent child can receive a TANF service, as long as it is reasonably calculated to accomplish a purpose of the TANF program and does not constitute “assistance” as defined in the TANF regulations. ACF has indicated that services to noncustodial parents and older youth could satisfy one or more of the statutory purposes of the TANF program. Examples of services that could be provided include subsidized employment, job skills training, employment counseling, and employment placement services. (<http://www.acf.hhs.gov/programs/ofa/recovery/tanf-faq.htm>)

Summary of factual data and analytical methodologies

The deadline for earning federal funds under the TANF Emergency Contingency Fund is September 30. Funds that have been earned may be spent after September 30.

Comparison to rules in adjacent states

As of June 3, thirty states had been awarded a share of the TANF Emergency Contingency Fund for increased expenses on subsidized employment, including Michigan, Minnesota, Iowa, and Illinois.

Analysis used to determine effect on small businesses

There is a potential for small businesses to receive a wage subsidy for jobs created with ARRA funding.

Small Business Impact

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

The Department's Small Business Regulatory Coordinator is: Elaine Pridgen, Phone: (608) 267-9403, Email: elaine.pridgen@wisconsin.gov.

Fiscal Estimate**Assumptions used in arriving at fiscal estimate**

Section 49.162 (3) (b), Stats., provides that the department shall seek federal funds to pay for the cost of operating the transitional jobs demonstration project and may conduct the project only to the extent that the department obtains federal funds.

On June 23, the Joint Committee on Finance approved an increase in expenditure authority in the department's economic support federal block grant aids appropriation [s. 20.437 (2) (md)] of \$17,151,500 FED in 2010-11 to reflect the allocation of federal American Recovery and Reinvestment Act of 2009 funds in the department to support the transitional jobs demonstration project.

State fiscal effect

None.

Local government fiscal effect

None.

Long-range fiscal implications

None.

Agency Contact Person

Jude Morse
Division of Family and Economic Security
Phone: (608) 266-2784
Email: jude.morse@wisconsin.gov.

Notice of Hearing**Children and Families****Early Care and Education, Chs. DCF 201-252****EmR1027, CR 10-086**

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.155 (7m), 49.195 (3s), and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold a public hearing to consider proposed permanent rules and emergency rules revising Chapter DCF 201, relating to child care subsidy program integrity and affecting small businesses.

Hearing Information

Date: Friday, August 6, 2010
Time: 1:30 p.m.
Location: MADISON
GEF 1 Building, Room D203
201 E. Washington Avenue

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

Copies of Proposed Rule

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

Elaine Pridgen, Office of Legal Counsel
Department of Children and Families
201 E. Washington Avenue
Madison, WI 53707
Phone: (608) 267-9403
Email: dcfpublichearing@wisconsin.gov

Submission of Written Comments

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

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than **August 9, 2010**, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by Department of Children and Families**Statutory authority**

Sections 49.155 (7m), 49.195 (3s), and 227.11 (2) (a), Stats.

Statutes interpreted

Sections 49.155 and 49.195, Stats.

Explanation of agency authority

Section 49.155 (7m) (a), Stats., as created by 2009 Wisconsin Act 28 and renumbered by 2009 Wisconsin Act 77, provides that the department shall by rule establish policies and procedures permitting the department to do all of the following if a child care provider submits false, misleading, or irregular information to the department or if a child care provider fails to comply with the terms of the program and fails to provide to the satisfaction of the department an explanation for the noncompliance:

- Recoup payments made to the child care provider.
- Withhold payments to be made to the child care provider.
- Impose a forfeiture on the child care provider.

Section 49.195 (3m) and (3n), Stats., provide for collection of overpayments under s. 49.155, Stats., by warrant and execution and levy. Subsection (3s) provides that the department shall specify by rule when requests for reviews, hearings and appeals under s. 49.195, Stats., may be made and the process to be used for the reviews, hearings and appeals. In promulgating the rules, the department shall provide for a hearing or review after a warrant under sub. (3m) has been issued and before the warrant has been executed, before property is levied under sub. (3m) or (3n) and after levied property is seized and before it is sold. The department shall specify by rule the time limit for a request for review or hearing. The department shall also specify by rule a minimum amount that must be due before collection proceedings under s. 49.195, Stats., may be commenced.

Summary of proposed rules

The rules will establish policies and procedures specifying when a child care provider is responsible for an overpayment under the child care subsidy program, techniques for collecting overpayments, and penalties that may be imposed on a provider who fails to comply with the terms of the program. Promulgation of these rules will also allow the department to implement s. 49.155 (7m) (b), Stats., as created by 2009 Wisconsin Act 77, regarding personal liability for overpayments and penalties for certain representatives of a child care business that is a corporation or limited liability company if the business is unable to pay.

A provider is responsible for an overpayment if any of the following conditions are met:

- The provider's attendance records indicate more hours than a child actually attended. If attended hours were misrepresented by the provider, the provider is responsible for an overpayment of the difference between the reimbursed hours and the actual hours of attendance regardless of the type of authorization.
- Care was provided at a location other than the location for which the authorization for care was issued, except for field trips.
- Care for children during time when the provider was in violation of limits on the maximum number of children in care or the required provider-to-child ratios for children of various ages.
- Care for children during time when the provider was in violation of the terms of the provider's license, including the age of the children served by the center and hours, days, and months of operation of the center.
- The provider benefited by receiving more child care reimbursement than otherwise would have been paid on the family's behalf under child care assistance program requirements, the parent is not responsible for the overpayment, and the reimbursement did not benefit the parent by causing the parent to pay less for child care expenses than the family otherwise would have been required to pay under child care assistance program requirements.

A provider and parent are jointly and severally liable for an overpayment if the provider and parent collude to violate a requirement of the Wisconsin Shares program.

If a child care provider submits false, misleading, or irregular information to a child care administrative agency or the department or if a child care provider fails to comply with the terms of the child care subsidy program and the provider fails to provide to the satisfaction of the department an explanation for the noncompliance, the child care administrative agency or department may refuse to issue payments to the provider, in addition to the authority granted the department under s. 49.155 (7) (b) 4., Stats.; recoup payments made to the provider; and impose a forfeiture on the provider. The existing rule also allows a child care administrative agency or the department to refuse to issue new child care authorizations to a provider for a period of time not to exceed 6 months and to revoke existing child care authorizations to the provider.

A child care administrative agency or the department may impose a forfeiture of \$100 to \$10,000 on a child care provider if the provider violates a provision of the Wisconsin Shares program. In determining the amount of the forfeiture, the child care administrative agency or department shall identify a specific date relating to a specific child and may consider the following factors:

- Seriousness of the violation.
- Extent of the violation.
- History of prior violations.
- Prior imposition of penalties.
- Provider willingness to obey program rules.

If the department or a certification agency has given notice to a provider that the provider is in violation of applicable licensing or certification rules and the provider has not corrected the violation, the department or child care administrative agency may refuse to issue new child care authorizations, revoke existing child care authorizations, or refuse to issue payments until the provider has corrected the violation and demonstrated sufficient controls to ensure that the violation or comparable violations are unlikely to occur again.

If a provider has not repaid an overpayment, the child care administrative agency or department may recover the overpayment by making an offset from current or future funds under its control that are payable to the provider of no more than 50% of each payment if the provider is expected to continue to care for children whose care is subsidized under s. 49.155, Stats. If a provider or former provider has not repaid an overpayment and the provider or former provider is not expected to continue to care for children whose care is subsidized under s. 49.155, Stats, the child care administrative agency or department may recover the overpayment by making an offset from 100% of funds under its control that are payable to the provider or former provider.

If a debt for repayment of an overpayment is delinquent and no appeal rights are pending, Section 49.195 (3m), Stats., authorizes the department to issue a warrant that is considered in all respects a final judgment constituting a perfected lien upon the debtor's right, title, and interest in all real and personal property located in the county in which the warrant is entered. The department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats, when a warrant has been issued, before property is seized, and before seized property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against

and mistaken identity of the debtor. The department may not withdraw the warrant based on a hearing request when a warrant is issued or cease enforcement before property is seized based on a hearing request. If a hearing is requested after property is seized, the seized property may not be sold before the hearing decision is issued or the hearing request is withdrawn. When the amount set forth in the warrant and all costs due the department have been paid, the department shall issue a satisfaction of the warrant. Statutory exemption rights in ss. 815.18 (3) and 815.20, Stats., apply to this administrative warrant and execution procedure.

If a debt for repayment of an overpayment is delinquent and no appeal rights are pending, Section 49.195 (3n), Stats., authorizes the department to levy on personal property belonging to the debtor, including wages due and deposits in a financial institution account. The department shall first send a notice of intent to levy at least 10 days prior to the levy, personally or by any type of mail service that requires a signature of acceptance. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy. Next, the department shall serve the levy upon the debtor and 3rd party in possession of property to which the debtor has rights. The debtor may appeal the levy proceeding under ch. 227, Stats., within 20 days from the date on the service of levy. The appeal shall be limited to questions of prior payment and mistaken identity of the debtor. The levy is not stayed pending an appeal where property is secured through the levy.

Within 20 days from the service of the levy upon a 3rd party, the 3rd party shall file an answer with the department stating whether the 3rd party is in possession of or obligated with respect to property or rights to property of the debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation. The 3rd party shall, upon demand of the department, surrender the personal property or rights or discharge the obligation to the department, except that part of the personal property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

If levied personal property that has been surrendered to the department is not a liquid asset in the form of cash, check, or an equivalent that can be applied to the debt without a sale of the asset, the department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before surrendered property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. If a hearing is requested, surrendered property may not be sold before the hearing decision is issued or the hearing request is withdrawn.

The debtor is entitled to an exemption from levy of the greater of a subsistence allowance of 75% of the debtor's disposable earnings then due and owing or an amount equal to 30 times the federal minimum hourly wage for each full week of the of the debtor's pay period, an amount equal to 60 times the federal minimum hourly wage for a two-week pay period, or an amount equal to 130 times the federal minimum hourly wage for a monthly pay period. The debtor is entitled to an exemption of the first \$1,000 of an account in a depository institution.

Any appeal based on a notice received in a warrant and execution or levy proceeding or a notice of intent to certify a debt for set-off against a state tax refund shall be limited to

questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The minimum amount that must be due before warrant and execution and levy procedures may be commenced is \$300. The department may waive recovery of an overpayment if the department has made reasonable efforts to recover the overpayment from the debtor and determines it is no longer cost effective to continue overpayment recovery efforts.

Summary of factual data and analytical methodologies

Section 201.04 (5) (b) 1. of this rule refers to s. DCF 201.04 (2g) (a). Section DCF 201.04 (2) (d) was renumbered s. DCF 201.04 (2g) (a) in EmR10-056/CR10-056, relating to authorized hours of subsidized child care.

Comparison with federal regulations

States are required to implement strategies to prevent, measure, identify, reduce, and collect improper payments for funding received under the Child Care and Development Fund.

Comparison with rules in adjacent states

Minnesota:

Overpayments that benefit a provider and not a family are recouped from future payments to the provider if the provider continues to care for subsidized children.

Illinois:

Overpayments are recovered from providers who do not comply with program policies by tax intercept, reductions in future payments, or other means determined to be effective.

Iowa:

Iowa uses factors to be considered in determining penalties against providers who violate the terms of the child care program.

Michigan:

Michigan has proposed rules on overpayment recovery and revocation if a provider's attendance records are not accurate.

Analysis used to determine effect on small businesses

The rules are primarily implementing statutory direction.

Small Business Impact

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

The Department's Small Business Regulatory Coordinator is: Elaine Pridgen, Phone: (608) 267-9403, Email: elaine.pridgen@wisconsin.gov.

Fiscal Estimate

Assumptions used in arriving at fiscal estimate

Section 49.155 (7m), Stats., as created by 2009 Wisconsin Act 28, and s. 49.195 (3m) and (3n), Stats., allow the Department to pursue collection of overpayments to child care providers receiving payments from the Wisconsin Shares program through use of warrants, execution of liens, and levies. State staff and IT systems for applying these administrative collection tools have been in place since 2007 for levies and longer for the warrant and lien execution processes. Up to this time these collection options have been applied to participants only. This rule establishes procedures for extending the use of these tools to collection of overpayments from providers.

Because staff and IT systems are already in place for administration of these collection tools, it is anticipated that

the additional workload for initiating provider overpayment collections will be minimal, and will be able to be covered within existing resources. Annual revenues from collections and fees associated with initiating warrants, liens and levies will be available to cover administrative costs for provider overpayment collections. While annual costs for collections will increase, they will be covered by annual increases in revenues.

As of June 2010 over \$7.1 million of child care provider overpayments have been identified for possible collection action. While child care providers who are subject to overpayment collections will have appeal rights, there is no reliable basis to estimate how many will appeal. Costs associated with appeals are anticipated to increase, but revenues from collections will be available to cover those costs also.

State fiscal effect

Increase existing revenue.

Increase costs – may be possible to absorb within agency's budget.

Long–range fiscal implications

None.

Agency Contact Person

Jim Bates, Section Chief
Fraud Detection and Investigation Unit
Division of Early Care and Education
Phone: (608) 266–6946
Email: jim.bates@wisconsin.gov

Notice of Hearing

Commerce

***Wis. Commercial Building Code, Chs. Comm 60–66
EmR1022***

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1) and 101.123 (6) Stats., the Department of Commerce will hold a public hearing on emergency rules to revise section Comm 62.0400, relating to no smoking signs.

Hearing Information

Date: July 26, 2010
Time: 10:00 a.m.
Location: Conference Room 3C
Thompson Commerce Center
201 West Washington Avenue
Madison, WI

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

Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the emergency rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive

individual responses. The hearing record on the emergency rules will remain open until **July 30, 2010**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email jim.quast@wisconsin.gov.

Copies of Emergency Rules

The emergency rules and an analysis of the rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, or telephone (608) 266–9292 or TDD Relay dial 711 in Wisconsin or (800) 947–3529. Copies will also be available at the public hearing.

Analysis Prepared by Department of Commerce

Statutes interpreted

Section 101.123 (6), Stats.

Statutory authority

Sections 101.02 (1) and 101.123 (6), Stats.

Related statute or rule

Statutes: 101.123 (2m)

Explanation of agency authority

2009 Wisconsin Act 12, s. 101.123, Stats., which is to take effect on July 5, 2010, basically prohibits smoking in enclosed places of public buildings and places of employment. The Act directs the department to establish characteristics for no smoking signs which persons in charge are to utilize aboard public conveyances and in public buildings and places of employment.

Summary of proposed rules

The rules dictate that minimally no smoking signs include the international “No Smoking” symbol consisting of a pictorial burning cigarette enclosed in a red circle with a red bar across the cigarette.

Comparison with federal regulations

An internet search on U.S. federal regulations and U.S. federal register yielded no results regarding a general national prohibition of smoking in places of employment and public buildings.

Comparison with rules in adjacent states

The following is a comparison of smoking prohibitions and signage enacted in adjacent states.

Illinois:

The Smoke Free Illinois Act, 410 ILCS 82, as of January 1, 2008 prohibits smoking in a public place or in any place of employment or within 15 feet of any entrance to a public place or place of employment. Under the Act, “No Smoking” signs or the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it are to be utilized.

Iowa:

Effective July 1, 2008, Iowa under the Smokefree Air Act no longer allows smoking in almost all public places and enclosed areas within places of employment, as well as some outdoor areas. The law applies to: restaurants, bars, outdoor

entertainment events and amphitheatres. It also covers places of employment such as office buildings, health care facilities, and child care facilities. Smoking is allowed on the gaming floor of a licensed casino, as well as designated hotel and motel rooms. Under the law, “No Smoking” signs or the international “No Smoking” symbol are to identify no smoking establishments.

Michigan:

Beginning May 1, 2010, smoking is prohibited in most public places in Michigan. The law covers any workplace and any food service establishment. This law covers public places, including, but not limited to, restaurants, bars, shopping malls, bowling alleys, concert halls, arenas, museums, mechanic shops, health facilities, nursing homes, education facilities, and child care centers. Under the Act, “No Smoking” signs or the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it are to be utilized.

Minnesota:

As of October 1, 2007 Minnesota under the Clean Indoor Air Act prohibits smoking in bars, restaurants, private clubs such as VFWs and American Legion halls, bowling alleys, country club lounges, lobbies of hotels and motels, public transportation, taxis, home offices where employees work or customers visit, home day cares when children are present, and smaller commercial vehicles carrying more than one person. Under the rules administered by the Minnesota Department of Health, s. 4620.0500, whenever the international no smoking symbol is used, the diameter of the outer circle must not be less than three inches.

Summary of factual data and analytical methodologies

The rules were developed as a result of an analysis of 2009 Wisconsin Act 12 and the variety of buildings and structures potentially affected and their circumstances of operation.

Small Business Impact

The department does not believe that the proposed rules will increase the effect on small businesses over that imposed by the Act.

An economic impact report has not been required to be prepared.

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

Fiscal Estimate

State fiscal effect

None.

Local government fiscal effect

None.

Long-range fiscal implications

None are anticipated.

Text of Emergency Rule

SECTION 1. Comm 62.0400 (5) is created to read:

Comm 62.0400 (5) NO-SMOKING SIGNS. No-smoking signs shall include the international “No

Smoking” symbol consisting of a pictorial burning cigarette enclosed in a red circle with a red bar across the cigarette.

Agency Contact person

James Quast, Program Manager

Phone: (608) 266-9292

Email: jim.quast@wisconsin.gov

Notice of Hearing

Commerce

**Financial Resources for Businesses and Communities,
Chs. Comm 100—**

CR 10-079

NOTICE IS HEREBY GIVEN that pursuant to sections 560.602 and 560.68 of the Statutes, the Department of Commerce will hold a public Hearing on proposed rules under Chapter Comm 106, relating to the Wisconsin Development Fund, and affecting small businesses.

Hearing Information

Date: Tuesday, August 10, 2010

Time: 11:00 a.m.

Location: Room 3B
Thompson Commerce Center
201 West Washington Avenue
Madison, WI

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.

Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e-mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until **August 11, 2010**, 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 Proposed Rules

The proposed rules and an analysis of the rules are available on the Internet by entering “Comm 106” in the search engine at the following Web site: <https://health.wisconsin.gov/admrules/public/Home>.

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

Section 560.203, Stats., and Subchapter V of Chapter 560, Stats., as affected by 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2, 28, and 265.

Statutory authority

Sections 227.11 (2) (a), 560.602, and 560.68, 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 560.602 requires the Department to promulgate rules establishing the policies and procedures for awarding grants and loans through the Wisconsin Development Fund. Section 560.68 requires the Department to establish criteria for the types of projects that are eligible for funding and the types of eligible projects which will receive priority.

Related statute or rule

Several statute sections and other Departmental rules address financial incentives for business and economic development in Wisconsin. For example, (1) sections 560.70 to 560.7995 of the Statutes and chapters Comm 100, 107, 112, and 118 address statewide tax–credit programs for job creation, capital investment, employee training, and corporate headquarters; and (2) several other sections of chapter 560 and other Comm chapters address more–narrowly targeted economic development incentives, such as for film productions, dairy manufacturing facilities, technology commercialization, rural economic development, and brownfield redevelopment.

Plain language analysis

These rule changes would update chapter Comm 106 to make it consistent with the portions of 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2, 28, and 265 that address the Wisconsin Development Fund, as administered by the Department under subchapter V of chapter 560 of the Statutes. For example, these rule changes would repeal all of the current requirements relating to the Economic Policy Board that exists under section 15.155 (2) of the Statutes, due to the corresponding repeal of associated requirements in 2009 Wisconsin Act 265.

These rule changes would more effectively direct economic development grants and loans toward capital financing, worker training, entrepreneurial development, providing assistance to technology–based business or to businesses at a foreign trade show or event, promoting urban or regional economic development, establishing revolving loan funds, providing working capital, and promoting employee ownership.

Comparison with federal regulations

The Department is not aware of any existing or proposed federal regulation that addresses these proposed rule changes.

Comparison with rules in adjacent states

Illinois:

Illinois offers several grant and loan programs that are similar to those available through the Wisconsin Development Fund. The Illinois Large Business Development Program provides grants to any business which is expanding or relocating and which is (1) creating or retaining a significant number of jobs or (2) investing

significant private resources. Though the Manufacturing Modernization Loan Program, Illinois provides loans at sub–prime rates to existing manufacturing companies which are retooling, upgrading equipment, or expanding their business, and which employ fewer than 500 full–time employees. Loan amounts range from \$10,000 to \$750,000 and are limited to 25% of the total project cost. Funding under both programs is available to finance building construction or renovation, and to purchase land or buildings, and certain types of machinery and equipment.

The *Employer Training Investment Program* provides single–company or multi–company grants to individual companies, intermediary organizations, and original equipment manufacturers, to reimburse them for up to 50% of the cost of training employees. Grants are available to single companies that are expanding, introducing more efficient technologies or continuous improvement systems, or providing training to employees threatened with layoff. Additional incentive funds may also be provided to companies undertaking permanent expansion, location, or retention projects.

Illinois also operates a *Rural Micro–Business Participation Loan Program* that provides subordinated loans of up to \$25,000 (50% of a project) to rural micro–businesses through participating lending institutions. The borrower provides equity of at least 10% up to \$1,000.

Iowa:

Iowa provides funding to support capital financing, entrepreneurial development, worker training, foreign trade show assistance, and research and development, through a number of programs. The Grow Iowa Values Financial Assistance Program provides loans and forgivable loans to companies which create new employment opportunities or which retain existing jobs and make new capital investments in Iowa. Eligible project costs include land or building acquisition, building construction or remodeling, site preparation, and the purchase of machinery and equipment, computer hardware, and furniture and fixtures. Businesses must meet county wage threshold requirements.

The *Iowa Networking Fund* provides reimbursement of up to \$5,000 for networking events designed to generate new innovations, partnerships, and deal flow in the advanced manufacturing, biosciences, or information technology industries.

Iowa also offers several employee training programs including the *Information Technology Training Program*, the *Iowa Industrial New Jobs Training Program*, and the *Iowa Jobs Training Program*. These programs provide (1) funding to IT firms to upgrade technical skills of existing high–level employees; (2) no–cost or reduced–cost job training services to new employees of eligible businesses, through Iowa’s community college system; and (3) job training services to current employees of eligible businesses in Iowa. Iowa’s employee–training programs are not structured primarily as business expansion or retention tools, as is the case under the Wisconsin Development Fund.

The *Export Trade Assistance Program* pays for up to 75% of an Iowa company’s eligible cost to participate in a trade show or trade mission outside of the United States. An applicant may receive up to \$3,000 in assistance per event up to three times per year. The applicant must have fewer than 500 employees (75% of whom are employed in Iowa), and the product or services exhibited must be manufactured, processed, value–added, grown, or raised in Iowa.

Michigan:

Michigan offers capital financing, worker training, and employee ownership, through several programs. The Michigan Charter One Job Creation Loan Program provides first–lien loans to companies currently doing business in Michigan or to those planning a significant investment in Michigan. Loans are limited to 75% of total project costs and range from \$500,000 to \$10,000,000. Eligible project costs include the cost to purchase or upgrade machinery or equipment and the cost of building acquisition or remodeling.

Michigan's Economic Development Job Training Program provides training resources to retain and attract businesses and workers. Priority funding is provided to projects that meet at least two of the following criteria: demonstrate a need for highly skilled training; invest in Michigan through the purchase of property or equipment; create or retain high–wage or high–skill jobs; or train workers in advanced manufacturing or materials, life sciences, technology, homeland security or defense, or alternative energy industries. Businesses are required to provide a 30% match for training incumbent workers, and training must be provided to Michigan residents only. Funding may be provided directly to companies if at least 100 jobs will be created or if the company employs fewer than 50 employees.

Michigan also provides services to any company, individual, or organization interested in *employee ownership*. These services include general consulting and information on employee ownership program options, referrals to specialists who can assist in designing and implementing an employee stock ownership plan, identification of funding sources and options, and referrals to other technical assistance and training programs.

Minnesota:

Minnesota provides capital financing and worker training assistance through the following two programs. The *Minnesota Investment Fund* provides grant funding to municipal governments to offer low–interest loans to businesses in the industrial, manufacturing, and technology–related industries. Grants are limited to a maximum of \$500,000, and projects must be at least 50% privately financed. Eligible costs include the cost to purchase land, machinery, and equipment.

Minnesota also provides *Training Grants* of up to \$400,000 to educational institutions to support training–related costs or infrastructure improvements that benefit businesses located in or intending to locate within Minnesota. Businesses are required to provide at least a one–to–one match on program funds. Funds are given to training providers rather than individual businesses.

Summary of factual data and analytical methodologies

The data and methodology for developing these rule changes were derived from and consisted of (1) incorporating the criteria in 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2, 28, and 265 that address the Wisconsin Development Fund; and (2) incorporating applicable best practices the Department has developed in administering similar programs for economic and business development.

Analysis and supporting documents used to determine effect on small business

The primary documents that were used to determine the effect of the rules on small business were 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2, 28, and 265. The portions of

those Acts relating to the Wisconsin Development Fund apply their private–sector requirements only to businesses for which a corresponding grant or loan is desired.

Small Business Impact

These rule changes 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 grants or loans from the Wisconsin Development Fund.

Initial regulatory flexibility analysis

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

Businesses and individuals who choose to pursue grants or loans from the Wisconsin Development Fund, as established under subchapter V of chapter 560 of the Statutes.

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

No new reporting, bookkeeping or other procedures are required.

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, as listed above.

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 some documents relating to eligible activities and their priority, the associated workload is expected to be about the same as under the current administration of the Wisconsin Development Fund. 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 grants or loans from the Wisconsin Development Fund.

State fiscal effect

None.

Local government fiscal effect

None.

Long–range fiscal implications

None known.

Agency Contact Person

John Stricker
 Wisconsin Department of Commerce
 Bureau of Business Finance
 201 West Washington Avenue
 Madison, WI 53703
 Phone: (608) 261–7710
 Email: John.Stricker@wi.gov.

Notice of Hearing**Commerce**

***Financial Resources for Businesses and Communities,
 Chs. Comm 100—
 CR 10–080***

NOTICE IS HEREBY GIVEN that pursuant to sections 560.255 and 560.277 of the Statutes, the Department of Commerce will hold a public hearing on proposed rules to create Chapter Comm 126, relating to the Wisconsin Venture Fund, and affecting small businesses.

Hearing Information

Date: Tuesday, August 10, 2010
Time: 2:00 p.m.
Location: Room 3B
 Thompson Commerce Center
 201 West Washington Avenue
 Madison, WI

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.

Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until **August 11, 2010**, 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 Proposed Rule

The proposed rules and an analysis of the rules are available on the Internet by entering “Comm 126” in the search engine at the following Web site: <http://health.wisconsin.gov/admrules/public/Home>.

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 560.255 and 560.277, as created in 2009 Wisconsin Act 28.

Statutory authority

Sections 227.11 (2) (a), 560.255 and 560.277 (4) and (5).

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 560.255 directs the Department to promulgate rules for administering Wisconsin Angel Network grants. Sections 560.277 (4) and (5) direct the Department to promulgate rules for administering capital connections grants and venture seed fund grants, and for establishing a Wisconsin venture fund advisory council.

Related statute or rule

The Department has various rules for administering several economic development programs, but those rules do not specifically include the rule text in this order for (1) the Wisconsin Angel Network, (2) connecting business ventures and entrepreneurs with capital, (3) institutions that fund new businesses or determine proof of concept and feasibility of new business ideas, and (4) a Venture Fund Advisory Council.

Plain language analysis

The rules in this order set forth the criteria the department will use for (1) providing an annual grant to the Wisconsin Angel Network, (2) funding eligible institutions that connect business ventures and entrepreneurs with capital, (3) providing matching funds to eligible institutions that fund new businesses or determine proof of concept and feasibility of new business ideas, and (4) establishing and interacting with a Venture Fund Advisory Council.

Comparison with federal regulations

The Department is not aware of any existing or proposed federal regulation that addresses the content of these proposed rules.

Comparison with rules in adjacent states**WISCONSIN ANGEL NETWORK (WAN)*****Iowa:***

The Venture Network of Iowa provides a forum through which inventors and entrepreneurs interact in the hope of forging profitable, long–term business relationships. VNI has been a catalyst in the formation of new, viable businesses throughout Iowa by facilitating networking meetings for Iowa entrepreneurs, investors and business advisors. However, no state–level rules were found for VNI.

The remaining adjacent states typically have organizations like the Wisconsin Technology Council that houses WAN, but do not have a program like WAN to support angel networks.

Illinois:

The Illinois Venture Capital Association is a nonprofit trade organization for Illinois venture–capital and private–equity professionals. IVCA enhances the growth of Illinois’ \$77 billion venture–capital and private–equity community by advocating on behalf of the industry. IVCA promotes institutional investment in local private equity

firms, provides networking opportunities for Midwest-based firms, supports public-policy initiatives for making Illinois an appealing financial center, shares up-to-the-minute news on local venture-capital/private-equity firms and professional service providers, facilitates intermediaries' and entrepreneurs' identification of appropriate venture-capital or private-equity firms for a given investment, and communicates the substantial economic value of a strong private-equity community. No state-level rules were found for IVCA.

Minnesota:

The Minnesota High Tech Association supports the growth, sustainability and global competitiveness of Minnesota's technology-based economy through advocacy, collaboration and education. MHTA advocates for technology growth that benefits the full spectrum of technology companies as well as organizations which are dependent on technology. No state-level rules were found for MHTA.

Michigan:

Michigan provides funds for the Michigan Venture Capital Association, which advocates for the private-equity/venture-capital industry. MVCA is a nonprofit trade organization designed to bring together venture-capital industry participants. The organization's goal is to grow and sustain a vibrant venture-capital community. Membership includes private-venture capital funds, corporate-venture capital funds, private-equity firms, angel investors, and entrepreneurial infrastructure participants. MVCA is a vehicle to bring together industry participants and to provide a concerted voice for Michigan's venture-capital industry. The Michigan Economic Development Corporation is a founding member of MVCA and has aggressively supported the growth of angel networks to fill the gap in seed-stage financing. No state-level rules were found for MVCA.

CAPITAL CONNECTIONS GRANTS AND VENTURE SEED FUND GRANTS

Iowa:

No similar state-level program or rules were found.

Illinois:

No similar state-level program or rules were found.

Minnesota:

No similar state-level program or rules were found.

Michigan:

The Venture Michigan Fund invests in venture-capital firms that target seed and early-stage investments. Moneys for the \$95 million fund are provided by private investors who receive State-based single-business tax credits for investing in the fund. The 21st Century Investment Fund is funded by \$109 million of tobacco-settlement money. This fund invests in both venture-capital and private-equity companies and in both Michigan companies and out-of-state companies. No state-level rules were found for either of these programs.

Summary of factual data and analytical methodologies

The data and methodology for developing these rules were derived from and consisted of (1) applying the corresponding provisions in 2009 Wisconsin Act 28; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development

and business development; and (3) 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 Wisconsin Act 28. The proposed rules and the applicable portion of this Act apply their private-sector requirements only to entities that choose to pursue a corresponding grant. No economic impact report was prepared.

Small Business Impact

The rules are expected to result in only beneficial effects on small business because the rules only address grants for the Wisconsin Angel Network and for research institutions or nonprofit organizations that are involved in economic development.

Initial regulatory flexibility analysis

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

Businesses which are associated with the Wisconsin Angel Network or which choose to pursue funding from a research institution or nonprofit organization that has received a grant from the Wisconsin Venture Fund for (1) connecting business ventures and entrepreneurs with capital or (2) funding early-stage businesses that are determining proof of concept and feasibility of new business ideas.

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

The rules would not directly impose any new reporting, bookkeeping or other procedures on small businesses.

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, as listed above.

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 applications and reports for grants under this chapter, the time needed for these reviews is expected to be spent by current employees. 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 entities that choose to pursue obtaining grants under this chapter.

State fiscal effect

None.

Local government fiscal effect

None.

Long–range fiscal implications

None known.

Agency Contact Person

Shelly Harkins
Wisconsin Department of Commerce
Bureau of Business Finance and Compliance
P.O. Box 7970, Madison, WI 53707–7970
Phone: (608) 266–0346
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**Notice of Proposed Rulemaking
Without Public Hearing
Health Services
Health, Chs. DHS 110—
CR 10–084**

NOTICE IS HEREBY GIVEN that pursuant to s. 227.11 (2) (a), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Health Services will adopt the following rule as proposed in this Notice, without public hearing unless within 30 days after publication of this Notice in the Wisconsin Administrative Register on July 14, 2010, the Department of Health Services is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule. The rule revises Chapter DHS 138, relating to subsidy of health insurance premiums for persons with HIV infection.

Submittal of Written Comments

General questions may be submitted to:
Kathy Rogers
Department of Public Health
Wisconsin Department of Health Services
Email: Kathleen.Rogers@wisconsin.gov
Phone: (608) 267–6875

Analysis Prepared by Department of Health Services

In this proposed order, the Department is making technical modifications to ch. DHS 138 to conform with the technical changes to ss. 252.16 and 252.17, Stats., made under 1999 Act 103, 2007 Act 20, and 2009 Act 28. The Department is operating in accordance with the modifications made to ss. 252.16 and 252.17, Stats., under each Act.

Sections 252.16 and 252.17, Stats., require the Department to operate a program that provides subsidies to cover the cost of health insurance premiums for persons with human immunodeficiency virus (HIV) infection who, because of a medical condition resulting from that infection, are unable to continue working or must reduce their hours of work or take an unpaid leave from their jobs. Under the program, the

Department pays premiums for health insurance coverage of eligible individuals to employers, insurers, or employees, as applicable. The Department has been operating this program since November 1990 under ch. DHS 138.

1999 Wisconsin Act 103 modified s. 252.17, Stats., in several respects. First, it increased the family income eligibility limits under s. 252.17 (3) (b), Stats., from 200% to a maximum of 300% of the FPL. Second, it created s. 252.17 (4) (d), Stats., which specifies that the Department will pay a portion of the health insurance premium for individuals whose family income is between 200% and 300% of the FPL. It further specifies that the Department will establish the schedule for payment in administrative rule. Act 103 also created s. 252.17 (6) (c), Stats., which requires the Department to establish, in rule, the premium contribution schedule for individuals who have a family income that exceeds 200% but does not exceed 300% of the FPL. In establishing the schedule, the Department is required to take into consideration both income level and family size.

2007 Wisconsin Act 20 modified s. 252.16 (1) (d) and (4) (a), Stats., to permit the Department to pay Part D Medicare premiums.

2009 Wisconsin Act 28 modifies ss. 252.16 (1) (ar) and 252.17 (3) (d), Stats., to include domestic partner in the definition of “dependent” and to allow an eligible individual’s premium contribution to include the cost of coverage of a domestic partner.

The Department’s modification of ch. DHS 138 will address the changes made to ss. 252.16 and 252.17, Stats., by the above mentioned legislation.

Comparison with federal regulations

Not applicable.

Comparison with rules in adjacent states

Illinois:

Illinois has a similar program to pay health insurance premiums for persons with HIV and has established administrative rules for the program under 89 ILL Admin. Code 118.150. Eligibility is similar to eligibility under Wisconsin’s program in that the applicant must have physician–documented HIV infection. The Illinois income guideline is at 200% of the FPL whereas Wisconsin’s income limit is at 300% of FPL. Illinois considers assets but Wisconsin does not. Illinois also caps its monthly premium payment at \$300. The Illinois rules do not address payment of premiums during an unpaid medical leave or require a cost share.

Iowa:

Iowa has a similar program operating under 441 IAC 75.22 (249A). Iowa’s eligibility requirements are similar to Wisconsin’s in that they require a physician to state that the applicant is HIV infected and that the applicant must reduce work hours or terminate employment due to HIV related illness. Iowa considers income and assets where Wisconsin only considers income. Both Wisconsin’s and Iowa’s income limit is at 300% of FPL. Iowa’s rules do not address payment of premiums during an unpaid medical leave nor do they require a cost share.

Michigan:

Michigan has a similar program to pay health insurance premiums but does not have administrative rules that govern the program.

Minnesota:

Minnesota has a similar program to pay health insurance premiums under Minn. Stat. s. 256.9365 but does not have administrative rules for the program.

Summary of factual data and analytical methodologies

The Department reviewed 1999 Act 103, 2007 Act 20, 2009 Act 28, and ss. 252.16 (6) (c) and 252.17 (6) (c), Stats., for this rulemaking. In addition, the Department reviewed program utilization data for SFY 2008 to determine the number of program participants who were on unpaid medical leave with an income greater than 200% FPL and less than or greater than 300% FPL. During SFY 2008, of eight program applicants or participants who were on unpaid medical leave, only two had income greater than 200% FPL.

Analysis and supporting documents used to determine effect on small business

Any business that offers employer based health insurance that is the employer or former employer of a program participant will be affected by the rule.

Small Business Impact

The proposed rules will not directly affect small businesses.

Fiscal Estimate**Summary**

The rules are amended to establish a 3% annual premium contribution schedule for individuals on unpaid medical leave who have a family income that exceeds 200% but does not exceed 300% of the federal poverty level (FPL). The rules are also amended to include “domestic partner” in the definition of “dependent” and to allow for payment of a participant’s health insurance premiums even if a domestic partner is also covered on the health insurance policy. These changes will impact only a small number of insurance program participants and will result in minimal cost increases to the Department that can be absorbed in the program budget.

During 2009 only 56 of 683 insurance program participants indicated on their application that they were living with a partner. Among these 56 individuals, only 2 (<1% of total program clients) had health insurance policies with family coverage. The increased cost to the Department for these individuals is the difference between the cost of an individual premium and the cost of a family premium. Also during 2009 only 4 of 683 (<1%) insurance program participants received program assistance while they were on an unpaid medical leave. None of them had income greater than 200% of FPL. These unpaid leaves are short-term, usually lasting 3 to 6 months and the cost associated with them is minimal compared to overall program costs.

State fiscal effect

Indeterminate. Increase costs — may be possible to absorb within agency’s budget.

Fund sources affected

GPR; FED.

Affected Ch. 20, Stats., appropriations

Section 20.435 (1) (am), Stats.

Local government fiscal effect

None.

Private sector fiscal effect

None.

Long-range fiscal implications

None known.

Text of Proposed Rule

SECTION 1. DHS 138.03 (2), (3) and (14) are amended to read:

DHS 138.03 (2) “Department” means the Wisconsin department of health and family services.

(3) “Dependent” means a spouse, domestic partner under ch. 770, Stats. or an unmarried child under the age of 19 years, an unmarried child who is a full-time student under the age of 21 years and who is financially dependent upon the parent, or an unmarried child of any age who is medically certified as disabled and who is dependent upon the parent.

(14) “Medicare” means coverage under part A or, part B or part D of Title XVIII of the federal social security act Social Security Act, 42 USC 1395 to ~~1395zz~~1395hhh.

SECTION 2. DHS 138.04 (1) (b) 2. and (d), (2) (a) (intro.) and 7. Note and (b) are amended to read:

DHS 138.04 Participation in the health insurance premium subsidy program. (1) (b) 2. For a subsidy under s. 252.17, Stats., have a family income that does not exceed ~~200~~300% of the federal poverty line for a family the size of the individual’s family;

(d) Have health insurance coverage under a group health plan ~~or~~, an individual health policy or Medicare part D, or is eligible for health insurance coverage under a group health plan ~~or~~, an individual health policy or Medicare part D;

(2) APPLICATION PROCESS. (a) Any individual who satisfies the eligibility conditions under sub. (1) and wants to participate in the health insurance premium subsidy program shall complete and submit to the department an application form, DOH 4614F-44614, which shall provide the following information:

7. Note: To obtain a copy of DOH 4614F - 44614, write or phone the Wisconsin Division of Public Health, AIDS/HIV Program, P.O. Box 2659, Madison, WI 53701-2659, (608) 267-5287. The completed form should be returned to the same office.

(b) Any individual who does not satisfy sub. (1) (b), (d) or (e), may submit an application form, DOH 4614F - 44614, that the department will hold until the individual satisfies all the applicable requirements under sub. (1). The department may not contact the individual’s employer, former employer or health insurer until the individual satisfies all the applicable requirements under sub. (1) unless the individual authorizes the department, in writing, to make that contact and to make any necessary disclosure regarding the individual’s HIV infection.

SECTION 3. DHS 138.05 (1) (a) 1. and 2. are amended to read:

DHS 138.05 (1) (a) 1. For a subsidy under s. 252.17, Stats., the department shall pay the full amount of the premium amount owed by the individual due for coverage under a group health plan during an unpaid medical leave; for an individual whose family income does not exceed 200% of the federal poverty line.

2. For a subsidy under s. 252.16, Stats., the department shall pay the full amount of the premium due for health

insurance coverage for an individual whose family income does not exceed 200% of the federal poverty level; and line.

SECTION 4. DHS 138.05 (1) (a) 4. and (dm) are created to read:

DHS 138.05 (1) (a) 4. For a subsidy under s. 252.17, Stats., the department shall pay the full amount of the premium, subject to a premium contribution assessment under par. (dm), due for health insurance coverage during an unpaid medical leave for an individual whose family income exceeds 200% but does not exceed 300% of the federal poverty line.

(dm) Upon approval of an application for a subsidy under s. 252.17, Stats., the department shall assess a premium contribution to be paid by an eligible individual whose family income exceeds 200% but does not exceed 300% of the federal poverty line. The amount of the contribution shall equal 3% of the annual policy premium prorated for the number of months that the individual is on an unpaid medical leave. The annual policy premium shall be determined by annualizing the first monthly premium that is due for the benefit year.

SECTION 5. DHS 138.05 (1) (b) and (e) are amended to read:

DHS 138.05 (1) (b) The department may not refuse to pay a premium because the health plan coverage that is available to the individual who satisfies s. DHS 138.04 (1) includes coverage of the individual's spouse or domestic partner under ch. 770, Stats., and dependents.

(e) The obligation of the department to make payments under this section is subject to the availability of funds in the appropriation account under s. 20.435 (1) (am), Stats.

Agency Contact Person

Kathy Rogers
Department of Health Services
Phone: (608) 267–6875
Email: Kathleen.Rogers@wisconsin.gov

Notice of Hearings

Health Services

Health, Chs. DHS 110—

CR 10–085

NOTICE IS HEREBY GIVEN that pursuant to ss. 256.08 (4) (k), 256.15 (4) (c), (5) (b), (6) (b) 2., (9m) and (13), and 227.11 (2) (a), Stats., the Department of Health Services will hold a public hearing on proposed permanent rules to consider repealing Chapters 111, 112, 113, and 119, and repealing and recreating Chapter DHS 110, relating to emergency medical services, including first responders, emergency medical technicians (EMTs), first responder service providers, non–transporting EMT service providers, and ambulance service providers.

Hearing Information

Date and Time

August 2, 2010
Monday
6:00 PM to 7:00 PM

Location

North Central Technical College
Health Sciences Building
Auditorium
1000 W. Campus Drive
Wausau, WI 54401
Phone: 715.675.3331

August 4, 2010
Wednesday
2:00 PM to 3:00 PM

Department of Health Services
1 W. Wilson Street
Madison, WI 53701
Phone: 608.266.1568

August 4, 2010
Wednesday
6:00 PM to 7:00 PM

Blackhawk Technical College
Room 1315 – Blackhawk Room
6004 South County Road G
Janesville, WI 53546–9458
Phone: 608.758.6900

August 5, 2010
Thursday
6:00 PM to 7:00 PM

Moraine Park Technical College
A–112 World Link Room
235 N. National Avenue
Fond du Lac, WI
Phone: 920.922.8611

August 6, 2010
Friday
6:00 PM to 7:00 PM

Wisconsin Indian Head
Technical College
Conference Center
2100 Beaser Avenue
Ashland, WI 54806
Phone: 715.682.4591

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 Brian Litza at 608–261–6870. 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 Brian Litza al número 608–261–6870. 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 Brian Litza ntawm 608–261–6870. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnuv ua ntej qhov hauj lwm ntawd.

Copies of the Proposed Rule

A copy of the rules may be obtained from the department at no charge by downloading the documents from www.adminrules.wisconsin.gov or by contacting:

Brian Litza, EMS Section Chief
1 W Wilson Street, Room 133
Madison, WI 53701
Phone: (608) 261–6870
Email: Brian.Litza@dhs.wisconsin.gov

Submittal of Written Comments

Comments may be submitted to Brian Litza, listed above, or to the Wisconsin Administrative Rules Website at www.adminrules.wisconsin.gov until **August 6, 2010**, 7:00 p.m.

Analysis Prepared by Department of Health Services

Statutes interpreted

Sections 256.01 to 256.18, Stats.

Statutory authority

Sections 256.08 (4) (k), 256.15 (4) (c), (5) (b), (6) (b) 2., (9m) and (13), and 227.11 (2) (a), Stats.

Explanation of agency authority

- Section 227.11 (2) (a), Stats., gives state agencies general rulemaking authority.
- Section 256.08 (4) (e) and (k), Stats., requires the Department to set standards for organizations offering training to first responders and EMTs regarding the topics that should be included in initial and continuing training, and to promulgate rules that set forth the authority and duties of medical directors.
- Section 256.08 (4) (g), Stats., authorizes the Department to promulgate any rule changes necessary to implement recommendations of the emergency medical services board.
- Section 256.15 (4) (c), Stats., authorizes the Department to promulgate rules that establish standards for staffing ambulances in which the primary services provided are those which an emergency medical technician–intermediate or an emergency medical technician – paramedic is authorized to provide.
- Section 256.15 (5) (b), Stats., requires the Department to promulgate rules establishing a system for issuing training permits and specifying the period for which an individual may hold a training permit.
- Section 256.15 (6) (b) 2., Stats., requires the Department, in conjunction with the Wisconsin Technical College System Board (WTCS), to promulgate rules specifying training, education, or examination requirements, including requirements for training for response to acts of terrorism and for license renewals for EMTs.
- Section 256.15 (6) (c), Stats., authorizes the Department to promulgate rules establishing qualifications for licensure as an ambulance service provider.
- Section 256.15 (6g), Stats., requires the Department to promulgate rules setting standards for certifying qualified individuals to perform defibrillation.
- Section 256.15 (9m), Stats., requires the Department to promulgate rules requiring EMTs, first responders, and individuals who provide instruction to EMTs and first responders to successfully complete training on the use of an automated external defibrillator (AED). Section 256.15 (9m), Stats., requires the rules to specify the content of the training, qualifications for providers of the training, and the frequency with which EMTs, first responders, and individuals who provide instruction to EMTs or first responders must complete the training.
- Section 256.15 (13) (a), Stats., authorizes the Department to promulgate rules necessary for the administration of s. 256.15, Stats.
- Section 256.15 (13) (b), Stats., requires the Department to establish by rule initial and renewal certification requirements, training requirements, including training for response to acts of terrorism, and requirements for use of AED and other medical techniques for first responders. Section 256.15 (13) (b), Stats., also requires the Department to develop by rule qualifications for medical directors serving ambulance service providers. Section 256.15 (3) (c), Stats., requires the Department to promulgate rules that specify actions that EMTs may take and the required involvement of physicians in actions undertaken by EMTs.

Related statute or rule

Section 250.01, Stats., and Ch. 257, Stats.

Plain language analysis

Currently, rules for each of the 5 levels of emergency medical care, including for ambulance service providers and non–transporting service providers, are in separate rule chapters. Over the years, previous rule revisions have unintentionally resulted in inconsistent standards, inconsistent application of standards, and other conflicts between the rules. In addition, several advances in the emergency medical services (EMS) have occurred that make existing rules outdated.

In this order, the department proposes to clarify and update existing standards, establish new standards, and consolidate existing rule chs. DHS 110 to 113 and 119, relating to EMS, which include rules regulating the operations of ambulance services, non–transporting services, first responders, and EMTs, into a single administrative rules chapter. The department also proposes to do the following:

- Create a critical care level of emergency medical care as an endorsement to the EMT–paramedic license. The proposed rules outline the requirements for the endorsement and the requirements for an ambulance service provider to be qualified to provide this level of care.
- Establish an endorsement to the EMT license for tactical EMS.
- Create an additional level of instructor. The creation of the EMS Instructor I level is based on the need to assure that all people who assist in a classroom are properly qualified. The rule outlines the qualifications and documentation that will be required by the certified training center to assure that EMS instructors are qualified and have verifiable qualifications.
- Create rules for air medical services. The focus on qualifications is the basis for the development of the proposed air medical services rules. There has been a national focus on air medical services and the air medical consortia in Wisconsin have asked the department to develop rules. The proposed rules set out basic parameters for service operation which are in addition to the existing ambulance service requirements for which air medical services are currently responsible.
- Remove rules specifying scopes of practice, including required skills, medication, and treatments, for EMS personnel. Current rules specify treatments, skills, and procedures that are no longer current or that may not be in the best interest of the patient. In order to maximize the department’s ability to keep up with the frequent advances in treatment, skills, procedures and other standards, the department will establish the scopes of practice in a

document that may be modified as needed in conjunction with the Governor–appointed EMS Advisory Board and the Physician Advisory Committee.

- Create administrative fees to offset the costs of administering the EMS program. With the increased flexibility and expansion of emergency medical care, there is an increased need to assure that EMS personnel are properly qualified and licensed. Currently, no licensing fees are assessed to EMS personnel or ambulance services. The department’s EMS section has limited revenue resources to support the 19,000 licensed individuals in the state. Increasingly, significant time is required to review the applicants for any criminal history or driver license issues. Applicants from other states must be reviewed to assure they are legally qualified to hold a license in Wisconsin. In order to recover these costs, the department proposes to assess administrative fees that are indexed to the consumer price index for urban consumers (CPI–U) for late renewal of a license, reinstatement of a lapsed license, returned renewal notification, and verification of out–of–state license to another state. The department also proposes to assess a fee to be licensed in Wisconsin based on training and licensure from another state (reciprocity), and a manual processing fee for manually processing applications outside of the department’s electronic licensing system.

Comparison with federal regulations

There appear to be no existing or proposed federal regulations that address the activities to be regulated by these rules, with the exception of s. 256.15 (8) (b) 3. and (c), Stats., which require individuals applying for initial or renewal certification as a first responder to complete an initial and refresher course that meets or exceeds the guidelines established by the National Highway Traffic Safety Administration (NHTSA) under 21 CFR 1205.3 (a) 5. The department’s EMS system, including licensing and certification requirements, is operated under the standards set forth by the Highway Safety Act of 1966 (P.L. 89–564, 80 Stat. 731) as administrated by NHTSA.

Comparison with rules in adjacent states

The licensing standards in Wisconsin and the adjacent states are generally the same. Wisconsin and the other 49 states operate an EMS system under standards set forth by NHTSA. In addition, most of the adjacent states (Iowa, Minnesota, and Michigan) use the licensing examination of the National Registry of Emergency Medical Technicians (NREMTs) as their state’s licensing examination

Illinois:

Similarities:

Illinois rules specify requirements for licensure or certification and training of first responders, EMTs, paramedics, ambulance service providers, including helicopter and air medical service providers (critical care) , and specify enforcement provisions, including suspension, revocation, and administrative fees similar to the requirements specified in the department’s existing and proposed rules.

Differences are as follows:

1. The department proposes to endorse the licenses of EMTs as tactical EMS if the individual participates with law enforcement or military teams and receive the appropriate training. Illinois has no similar license provisions.

2. Illinois’ administrative fees are limited to late renewal fees.

Iowa:

Similarities:

Iowa rules specify requirements for licensure or certification and training of first responders, EMTs, paramedics, critical care paramedic (called paramedic specialist), ambulance service providers, including helicopter and air medical service providers, and specify enforcement provisions, including suspension, revocation, and administrative fees similar to the requirements specified in the department’s existing and proposed rules.

Differences are as follows:

The department proposes to endorse the licenses of EMTs as tactical EMS if the individual participates with law enforcement or military teams and receives the appropriate training. Illinois has no similar license provisions.

Michigan:

Similarities:

Michigan rules specify requirements for licensure or certification and training of first responders, EMTs, paramedics, ambulance service providers, including helicopter and air medical service providers, and specify enforcement provisions, including suspension, revocation, and administrative fees similar to the requirements specified in the department’s existing and proposed rules.

Differences are as follows:

1. The department proposes to endorse the licenses of EMTs as tactical EMS if the individual participates with law enforcement or military teams and receive the appropriate training. Michigan has no similar license provisions.
2. The department proposes to endorse the license of a paramedic as critical care provided they complete the appropriate training. Michigan has no similar license provisions.
3. Michigan charges application fees.
4. Administrative actions are handled through a formal hearing process and do not allow the state EMS office to make any disciplinary decisions without a formal hearing.

Minnesota:

Minnesota does not address emergency medical services in administrative rules.

Summary of factual data and analytical methodologies

The department did all of the following to revise and consolidate the EMS rules:

1. Reviewed existing rules chs. DHS 110 to 113 and 119, and ss. 256.01 to 256.18, Stats.
2. Worked with the Governor appointed EMS Advisory Board to identify proposed changes, and to review and comment on draft language.
3. Solicited and reviewed comments and ideas for changes from emergency medical services personnel and other system stakeholders through state–wide public meetings.

Analysis and supporting documents used to determine effect on small business

The proposed rules will affect EMS training centers and emergency medical service providers, including first responder service providers, non–transporting EMT providers, and ambulance services providers. The department does not currently keep records that specifically identify the

size of an enterprise or whether an emergency medical services provider or training center is government owned and operated or privately owned and operated. The department has discerned, however, through its licensing and certification records, that the majority (approximately 96% of the 488 ambulance service providers and approximately 80% of training providers) are owned and operated by local government (Wisconsin Technical College System) or municipally owned. Regardless of the size or ownership status of the provider or training center, the proposed rules should have little to no negative fiscal impact on providers or training centers because the proposed rules consolidate, clarify, and by inserting new standards of care, update existing rules. These changes should make compliance easier and more efficient for small and large private sector providers.

Small Business Impact

The proposed rules will not have a negative fiscal impact on small or large private sector emergency medical service providers or training centers.

Small business regulatory coordinator

Rosie Greer

Phone: (608) 266-1279

Email: rosie.greer@dhs.wisconsin.gov

Fiscal Estimate

Summary

The rule revision will include license processing fees. These fees are focused on individuals who have a special request or fail to meet a deadline. The specific fees are:

- Late renewal of a license – \$50
- Reinstatement of a lapsed license – \$100
- Returned renewal notice– \$30
- Verification of license to another person or entity – \$35
- Reciprocity application fee – \$75
- Manual processing fee – \$35.

Based on the program's past experience, it is estimated that the new fees will generate \$58,000 PR annually.

State fiscal effect

Increase existing revenues.

Fund sources affected

PRO.

Local government fiscal effect

None.

Private sector fiscal effect

None.

Long-range fiscal implications

There should not be a long-range fiscal impact.

Agency Contact Person

Brian Litza, EMS Section Chief

1 W. Wilson Street, Room 133

Madison, WI 53701

(608) 261-6870

Brian.Litza@dhs.wisconsin.gov

Notice of Hearing

Insurance

CR 10-076

NOTICE IS HEREBY GIVEN That pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth under s. 227.18, Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider the adoption of a proposed rule revising sections Ins 6.05 and 6.07, Wis. Adm. Code, relating to policy form language simplification and readability and affecting small business.

Hearing Information

Date: July 27, 2010

Time: 1:00 p.m., or as soon thereafter as the matter may be reached

Location: OCI, Room 227, 2nd Floor
125 South Webster Street
Madison, WI

Submittal of Written Comments

Written comments can be mailed to:

Julie E. Walsh

Legal Unit – OCI Rule Comment for Rule Ins 605

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh

Legal Unit – OCI Rule Comment for Rule Ins 605

Office of the Commissioner of Insurance

125 South Webster St – 2nd Floor

Madison WI 53703-3474

Comments can be emailed to:

Julie E. Walsh

julie.walsh@wisconsin.gov

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

The deadline for submitting comments is 4:00 p.m. on the 10th day after the date for the hearing stated in this Notice of Hearing.

Copies of Proposed Rule

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

Analysis Prepared by the Office of the Commissioner of Insurance

Statutes interpreted

Sections 600.01 and 628.34 (12), Stats.

Statutory authority

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 631.20, 631.21, 631.22, 631.61, Stats.

Explanation of agency authority

Section 631.20, Stats., requires an insurer to file forms with OCI and provide insureds with copies of their policies and

applications for insurance. This proposed rule revises the requirements for the form filing submission, specifies notices and access to copies of policies and as such interprets the applicable statutes listed above and also specifies the information required to be submitted pursuant to s. 601.42, Stats. Additionally s. 631.22 (2), Stats., requires insurers to provide policies that are coherent, written in commonly understood language, legible, appropriately divided and captioned by its various sections and presented in a meaningful sequence. This proposed rule interprets this statute and by rule establishes standards for compliance.

Related statutes or rules

This proposed rule revises the current rules, ss. Ins 6.05 and 6.07, Wis. Adm. Code, governing filing submissions and readability of policy forms.

Plain language analysis and summary of the proposed rule

The proposed rule was developed with the assistance of an advisory council charged with developing the reviewing and recommending modifications to the Flesch readability score for personal lines property and casualty insurance products and disability insurance products. Additionally the council was charged with determining how to best increase consumer access to complete in force copies of their insurance policies. The advisory council after its first meeting divided along product lines into subgroups and individually each subgroup met 4 times between October 2009 and April 2010. The council then met two more times as a complete council in April and May 2010. The council members included intermediaries, public members, consumer advocates and representatives from the insurance industry.

As charged, the council recommended the proposed changes to the Flesch readability score for consumer insurance policies except for product lines that are described in s. 601.58 (2) (k), Stats., the interstate insurance product regulation compact. Additionally, the council recommended providing notice to insureds instructing them on how to access a complete in force copy of their insurance policy.

Separately for the advisory council, this proposed rule also revises the current rules governing the form and content of form filing submissions. The following is a summary of the proposed changes in the proposed rule as follows:

1. It requires the insurer to submit forms using a transmittal document established by standards adopted by the National Association of Insurance Commissioners.
2. It requires an insurer to include in its form filing a final printed or electronic format copy of the form as it will be used with the public and deletes the option of filing a facsimile.
3. It makes it clear that an insurer may file a form electronically.
4. It makes it clear that an insurer must file the required transmittal document when it files a form.
5. It requires certain consumer insurance policies to increase the readability score, Flesch or equivalent, from a score of 40 to 50.
6. It requires an insurer offering consumer insurance policies or certificates except town mutuals, and policies or certificates in the product lines that are described in s. 601.58 (2) (k), Stats., and property and casualty products that are other than personal lines to have on its' website information on how an insured may obtain an electronic or paper copy of their in force policy and the timeframe within which to provide the information. The product lines described in s.

601.58 (2) (k), Stats., are individual or group annuity, life insurance, disability income or long–term care insurance. This exception applies regardless of whether the policy is subject to or filed with the Interstate Compact.

7. It excepts product lines that are described s. 601.58 (2) (k), Stats., property and casualty products that are other than personal lines and insurers subject to ch. 618, Stats., from the website notice requirements but retains other statutory requirements for providing copies of in force policies upon request to insureds.

Comparison with federal regulations

There are no existing or proposed federal regulations that address the topic of this proposed rule.

Comparison of similar rules in adjacent states

Illinois:

NAIC transmittal form required as of February 1, 2006. May file either printed or electronic forms and may file electronically with SERFF or by CD Rom sent to the insurance department. Illinois requires products to be readable but does not set a score. Illinois is pending legislative changes to participate in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Illinois does not have a website notice provision for insureds to access a complete copy of their policy.

Iowa:

NAIC transmittal form required as of December 1, 2005. May file either printed or electronic forms and may file electronically with SERFF or by CD Rom sent to the insurance department. Iowa requires products to be readable but does not set a score. Iowa participates in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Iowa does not have a website notice provision for insureds to access a complete copy of their policy.

Michigan:

NAIC transmittal form required as of January 1, 2006. May file either printed or electronic forms and may file electronically with SERFF or by CD Rom sent to the insurance department. Michigan requires forms to achieve a Flesch score of not less than 45 under Mich. Admin. Code s. 500.2236 r. 2003 (1956). Michigan participates in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Michigan does not have a website notice provision for insureds to access a complete copy of their policy.

Minnesota:

NAIC transmittal form required as of February 1, 2006. May file either printed or electronic forms and may file electronically with SERFF or by CD Rom sent to the insurance department. Minnesota requires under Minn. Stat. Ch. 72C, a Flesch score of more than 40 for life and health forms. Minnesota participates in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Minnesota does not have a website notice provision for insureds to access a complete copy of their policy.

Summary of factual data and analytical methodologies

OCI proposes this rule based on its experience with administration of form filings and based on the activities of the NAIC which include development of uniform form filing submission standards. This rule is also reflective of changes

in technology for both the insurers and consumers as acknowledged in the electronic access to policies. Finally the rule increases readability scores for disability consumer insurance policies not otherwise excepted to make the policies more easily readable to the general public.

Analysis and supporting documentation used to determine effect on small businesses

The effect of the proposed rule on small business is determined by the substantive changes included in the proposal. These changes will allow use of nationally uniform, electronic, transmittal documents and will not increase and are likely to decrease costs of form filings. The proposed changes to the readability scores may increase costs during implementation of the higher score but will not be a significant financial impact. There may be expense for adding information to an insurer's website for how an insured may request copies of their policy but this too should not be a significant financial impact and may be offset by the savings they may experience by being allowed to provide copies of in force policies electronically. Additionally, most small businesses regulated by the office have been excepted from these requirements to minimize the impact to small businesses.

Small Business Impact

This rule will have little or no effect on small businesses.

Initial regulatory flexibility analysis

Pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

Types of small businesses affected:

Insurance agents, LSHO, Town Mutuals, Small Insurers.

Description of reporting and bookkeeping procedures required:

Adds the option of electronically filing forms to the OCI and requires attestation of the Flesch score and tool used to determine the Flesch score. No other bookkeeping or reporting requirements other than are currently required.

Description of professional skills required:

Some small businesses, not otherwise exempted by rule, will need to update the website to include information on how to request or access the insured's policy. Other than creating the notice, no other professional skills other than are currently required.

Small business regulatory coordinator

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

Fiscal Estimate

State fiscal effect

None.

Local government fiscal effect

None.

Private sector fiscal effect

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

Long-range fiscal implications

None.

Agency Contact Person

Inger Williams
OCI Services Section
Phone: (608) 264-8110
Email: inger.williams@wisconsin.gov
Address: 125 South Webster Street, 2nd Floor
Madison WI 53703-3474

Notice of Hearing

Insurance

CR 10-077

NOTICE IS HEREBY GIVEN That pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth under s. 227.18, Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider the adoption of a proposed rule revising section Ins 51.01, Wis. Adm. Code, relating to the risk-based capital of health insurers, property and casualty insurers and fraternal insurers.

Hearing Information

Date: August 3, 2010
Time: 10:00 a.m., or as soon thereafter as the matter may be reached
Location: OCI, Room 227, 2nd Floor
125 South Webster Street
Madison, WI

Submission of Written Comments

Written comments can be mailed to:

James W. Harris
Legal Unit – OCI Rule Comment for Rule Ins 5101
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Written comments can be hand delivered to:

James W. Harris
Legal Unit – OCI Rule Comment for Rule Ins 5101
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Comments can be emailed to:

James W. Harris
james.harris@wisconsin.gov

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

The deadline for submitting comments is **4:00 p.m. on the 7th day after the date for the hearing** stated in this Notice of Hearing.

Copies of Proposed Rule

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

Analysis Prepared by the Office of the Commissioner of Insurance

Statutes interpreted

Sections 600.01 and 623.11, Stats.

Statutory authority

Sections 601.01, 601.41 (3), 601.42, 611.19 (1), 618.21, 623.02 and 623.11, Stats.

Explanation of agency authority

The commissioner may establish by rule minimum ratios for determination of the amount of compulsory surplus that an insurer is required to have in order not to be financially hazardous under s. 645.41, Stat., as an amount that will provide reasonable security against contingencies affecting the insurer's financial position, in relation to any relevant variables as set forth in s. 623.11 (2), Stat. The national association of insurance commissioners (NAIC) has by model regulation suggested updated ratios to apply to health insurers and property and casualty insurers. The commissioner has determined that solvency monitoring of fraternal insurers will be enhanced by including the insurers in RBC reporting requirements.

Related statutes or rules

None.

Plain language analysis and summary of the proposed rule

The proposed rule will modify the risk-based capital (RBC) requirements for insurers to include under the definition of a company action level event a trend test for property and casualty insurers and health insurers. The NAIC has amended instructions for property and casualty insurers and health insurers to include a trend test to improve the monitoring of insurer solvency. Under the proposed rule a company action level event would occur if the insurer's adjusted capital is between 2.0 and 3.0 times the authorized control level RBC and the insurer triggers a negative trend test determined in accordance with NAIC instructions.

Under the current rule, fraternal insurers are exempt from the RBC filing requirements, unless the commissioner finds that inclusion would improve solvency monitoring. The proposed rule will remove the general exemption and fraternal insurers will be subject to the same RBC reporting requirements as life insurers.

Comparison with federal regulations

There are no comparable federal regulations that are intended to address capital requirements for insurers.

Comparison of similar rules in adjacent states

Illinois:

215 IL Comp. Stat. 5/35 A–1–70, contains capital requirements for insurers comparable to the existing Wisconsin rule. To date there has been no formal adoption of language similar to the proposed rule.

Iowa:

Iowa Code ch. 521 F, contains capital requirements for insurers comparable to the existing Wisconsin rule. To date there has been no formal adoption of language similar to the proposed rule.

Michigan:

Mich. Comp. Laws s. 550:1204 a., contains capital requirements for insurers comparable to the existing

Wisconsin rule. To date there has been no formal adoption of language similar to the proposed rule.

Minnesota:

Minn. Stat. s. 60.A.50, contains capital requirements for insurers comparable to the existing Wisconsin rule. To date there has been no formal adoption of language similar to the proposed rule.

Summary of factual data and analytical methodologies

NAIC models, insurer's financial information

Small Business Impact

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

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

Fiscal Estimate

State fiscal effect

None.

Local government fiscal effect

None.

Private sector fiscal effect

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

Long-range fiscal implications

None.

Agency Contact Person

Inger Williams

OCI Services Section

Phone: (608) 264–8110

Email: inger.williams@wisconsin.gov

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

Mail: PO Box 7873
Madison, WI 53707–7873

Notice of Hearing Public Instruction EmR1018, CR 10–074

NOTICE IS HEREBY GIVEN That pursuant to ss. 118.34 (2) (a), (b) 1. and 2. and (4) and 227.11 (2) (a), Stats., the Department of Public Instruction will hold a public hearing to consider emergency and proposed permanent rules creating Chapter PI 45, relating to race-based nicknames, logos, mascots, and team names.

Hearing Information

Date: July 29, 2010

Time: 10:30 – 12:30 a.m.

Location: Madison
GEF 3 Building
125 South Webster Street
Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Jennifer Kammerud, Legislative Liaison, at (608) 266–7073 or

Jennifer.kammerud@dpi.wi.gov or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Proposed Rule

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.wi.gov or by writing to:

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

Submittal of Written Comments

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than **August 4, 2010**, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by Department of Public Instruction

Statute interpreted

Section 118.134, Stats.

Statutory authority

Section 118.34 (2) (a), (b) 1. and 2. and (4), Stats.

Explanation of agency authority

2009 Wisconsin Act 250 allows a school district resident to object to the use of a race-based nickname, logo, mascot, or team name by the school board of that school district by filing a complaint with the state superintendent.

Under s. 118.34 (4), the state superintendent is required to promulgate rules necessary to implement and administer this provision.

Specifically under s. 118.34 (2) (a) and (b) 1. and 2., Stats., rules must define whether the use of the race-based nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping.

Related statute or rule

Chapter PI 9, pupil discrimination.

Plain language analysis

2009 Wisconsin Act 250 allows a school district resident to object to the use of a race-based nickname, logo, mascot, or team name by the school board of that school district by filing a complaint with the state superintendent. If a complaint objects to the use of a nickname or team name by a school board, the state superintendent must immediately review the complaint and determine whether the use of the nickname or team name by the school board, alone or in connection with a logo or mascot, is ambiguous as to whether it is race-based.

If the state superintendent determines that the use of the nickname, logo, mascot or team name is unambiguously race-based, the school board has the burden of proving by clear and convincing evidence that the use of the race-based nickname, logo, mascot or team name does not promote discrimination, pupil harassment, or stereotyping as defined by the state superintendent by rule.

If the state superintendent determines that the use of the nickname or team name by a school board is ambiguous as to whether it is race-based but that the use of the nickname or team name in connection with a logo or mascot is race-based, at the hearing the school board has the burden of providing by clear and convincing evidence that the use of the nickname or team name in connection with the logo or mascot does not promote discrimination, pupil harassment, or stereotyping, as defined by the state superintendent by rule.

If the state superintendent determines that the use of the nickname or team name by a school board is ambiguous as to whether it is race-based, the use of the nickname or team name by the school board is presumed to be not race-based and at the hearing the school district resident who filed the complaint has the burden of proving by clear and convincing evidence that the use of the nickname or team name promotes discrimination, pupil harassment, or stereotyping, as defined by the state superintendent by rule.

If the school board receives approval from a specific, federally recognized American Indian tribe to use the nickname, logo, mascot or team name, the state superintendent may determine that no contested case hearing is necessary or that a hearing date may be postponed for the purpose of obtaining additional information.

Under the Act, the state superintendent is required to promulgate rules to define whether the use of the nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping and other rules necessary to implement and administer this provision.

The rules specify that the use of any of the following nicknames or team names are unambiguously race-based and presumed to promote discrimination, pupil harassment or stereotyping unless the school district produces clear and convincing evidence refuting this presumption.

- A nickname or team name is unambiguously race-based if it includes any of the following terms: 1. the full or partial name of any specific, federally recognized American Indian tribe; 2. Indians; 3. Braves; or 4. Redmen.
- A nickname or team name is unambiguously race-based if it includes any of the terms arrows, blackhawks, chiefs, chieftains, hatchets, raiders, red raiders, warriors, or warhawks and is used in connection with any of the following logos or mascots: 1. A depiction of an American Indian person or persons, 2. Feathers or feather headdress, 3. Arrows, bows, spears, tomahawks, stone hatchets, or other historical or traditional American Indian weapons or tools, or 4. Historical or traditional American Indian drums, pipes, beadwork, clothing or footwear.

The rules establish procedural timelines as to when and what information must be submitted to the state superintendent by a school board and when a contested case hearing may or may not be scheduled.

Proposed permanent rules were submitted to the legislative council on June 16, 2010 and were promulgated as emergency rules effective June 1, 2010.

Comparison with federal regulations

N/A.

Comparison with rules in adjacent states

Illinois, Iowa, Michigan, and Minnesota do not have administrative rules relating to Indian nicknames, logos, mascots, and team names.

Summary of factual data and analytical methodologies

Current law, s. 118.13, Stats., prohibits discrimination against pupils on a number of grounds, including race and ancestry. Complaints relating to race–based names, logos, mascots and team names have been filed under this statute in the past. Under s. 118.13, Stats., the burden of proof is on the complainant to prove by a preponderance of the evidence that use of a nickname, logo, mascot, or team name results in pupil discrimination. In addition, the complaint first must be filed with the school board and then appealed to the department. 2009 Wisconsin Act 250 provides that a school district resident may object to a school board’s use of a race–based name, nickname, logo, mascot, or team name by filing a complaint directly with the state superintendent of public instruction. This Act creates a presumption that use of a race–based nickname, logo, mascot, or team name promotes discrimination and requires school boards to provide clear and convincing evidence to refute that presumption.

2009 Wisconsin Act 250 is supported by the 11 tribal governments in Wisconsin, the Great Lakes Inter–Tribal Council, the Wisconsin Indian Education Association, the Wisconsin Education Association Council, other Indian nations and organizations across the country, various national non–profit and faith–based organizations, and most recently the National Collegiate Athletic Association (NCAA).

Anticipated costs incurred by private sector

N/A.

Small Business Impact

The proposed rules will have no significant economic impact nor fiscal impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Fiscal Estimate**Assumptions used in arriving at fiscal estimate**

2009 Wisconsin Act 250 would allow a resident to object to the school district’s use of a race–based name, nickname, logo, or mascot by filing a complaint with the state superintendent. If discrimination is found, the school district will be ordered to terminate use of the name, nickname, logo, or mascot within 12 months unless an extenuating circumstance exists. Failure to terminate use could result in the district being subject to a \$100–\$1,000 forfeiture per day.

State fiscal effect

Costs to DPI will be related to the number of complaints that are brought to the state superintendent. Because it is not known how many, if any, complaints will be made, the costs are indeterminate.

Local fiscal effect

There are approximately 40 schools in the state that currently use American Indian names, nicknames, logos, or mascots. If required to terminate the use of the ethnic name, nickname, logo, or mascot, costs to a school district would be related to the replacement of existing supplies, team uniforms, and associated inventory that currently bear the name, nickname, logo, or mascot, and would vary from district to district. It is unknown how many, if any, residents of districts will file complaints and how many hearings will result in termination of the name, nickname, logo, or mascot. Thus, local costs are indeterminate.

It is also not known how many, if any, districts will not terminate use of their name, nickname, logo, or mascot if

ordered to do so. These districts would be subject to a forfeiture of \$100–\$1,000 per day. It is not known how many days that districts would remain out of compliance or the exact amount they would be ordered to pay. Therefore, the fiscal effect of these provisions are also not able to be determined.

Agency Contact Person

Carolyn Stanford Taylor, Division Administrator
Division for Learning Support: Equity and Advocacy,
Email: carolyn.stanfordtaylor@dpi.wi.gov
Phone: (608) 266–1649.

**Notice of Hearing
Public Instruction
EmR1023, CR 10–075**

NOTICE IS HEREBY GIVEN That pursuant to ss. 118.42 (4) and 227.11 (2) (a), Stats., the Department of Public Instruction will hold a public hearing to consider emergency and proposed permanent rules creating Chapter PI 43, relating to education reform.

Hearing Information

Date: July 27, 2010
Time: 3:00 – 4:00 p.m.
Location: Madison
GEF 3 Building
125 South Webster Street
Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Jeff Pertl, Policy Initiatives Advisor and Federal Funds Trustee at (608) 267–9232 or jeff.pertl@dpi.wi.gov or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Proposed Rule

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.wi.gov or by writing to:

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

Submission of Written Comments

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than **July 30, 2010**, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by Department of Public Instruction**Statute interpreted**

Section 118.42, Stats.

Statutory authority

Sections 118.42 (4) and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 118.42 (4), Stats., requires the state superintendent to promulgate rules establishing criteria and procedures for determining whether a school or school district is in need of improvement and whether a school is among the lowest performing 5 percent of all public schools in the state.

Section 227.11 (2) (a), Stats., gives an agency rule–making authority to interpret the provision of any statute enforced or administered by it if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule

N/A.

Plain language analysis

2009 Wisconsin Act 215 requires schools and school districts to implement certain provisions if they are considered in need of improvement for a certain period of time or are considered low performing. The Act also authorizes the state superintendent of public instruction to intervene in a school district if they are considered in need of improvement for a certain period of time or are considered low performing. The Act requires rules to establish criteria and procedures for determining whether a school or school district is in need of improvement and whether a school is among the lowest performing 5 percent of public schools in the state. In promulgating these rules, the state superintendent is required to consult with the school district or school board president, the school district administrator, and labor organizations representing employees of each school district that is immediately affected by the Act and legislators whose legislative districts include any portion of each school district.

The proposed rule references Wisconsin’s state plan that is required under 20 USC 6311 in determining districts or schools that are in need of improvement or low performing. The methods used in making these determinations are complicated and have to be approved by the U.S. Department of Education (USDE). The department prefers a consistent approach be used in making these determinations so that state rules do not unintentionally conflict with the federally approved method.

These rules were promulgated as emergency rules effective June 28, 2010.

Comparison with federal regulations

The Elementary and Secondary Education Act (ESEA) was first enacted in 1965 and reauthorized in 2001 as the No Child Left Behind (NCLB) Act. All school districts in Wisconsin receive some federal funding under ESEA.

To receive funding under the Act, the department is required to submit a plan to the USDE under 20 USC 6311. In general, the plan must demonstrate that the state has developed and is implementing a single, statewide state accountability system that will be effective in ensuring that all local educational agencies, public elementary schools, and public secondary schools make adequate yearly progress. Under the plan, all Wisconsin school districts and individual schools within each district must meet the state’s four adequate yearly progress (AYP) objectives each year. The first two objectives, based on Wisconsin’s statewide standardized tests in reading and mathematics, have proficiency targets. The other two objectives are:

- 95 percent of enrolled students participating in statewide reading and mathematics assessments, which include the

Wisconsin Knowledge and Concepts Examinations (WKCE) and the Wisconsin Alternate Assessment for Students with Disabilities (WAA–SwD).

- A high school graduation rate of at least 85 percent or growth of at least 2 percent from the prior year on these indicators and elementary and middle school attendance rates of at least 85 percent or any growth from the prior year on these indicators.

The four AYP objectives apply to all students as well as to subgroups of students of sufficient size. Schools that miss the same AYP objective for one or more student groups for two consecutive years are identified for improvement.

The department applies USDE–approved statistical procedures to ensure decision consistency in reviewing AYP and in identifying schools and districts for improvement. Student proficiency is based on the achievement of students enrolled for the full academic year. District accountability is divided into grade spans. A district must miss the same AYP target across elementary, middle, and high school for two consecutive years to be found in need of improvement. The subsequent years of school and district improvement are described in *Wisconsin Public Schools–Levels of Accountability*, available on the DPI website at <http://dpi.wi.gov/oea/doc/sifilevels.doc>.

Comparison with rules in adjacent states

Illinois, Iowa, Michigan, and Minnesota do not have administrative rules relating to education reform.

Summary of factual data and analytical methodologies

The proposed rule references Wisconsin’s state plan that is required under 20 USC 6311 in determining districts or schools that are in need of improvement or low performing. The methods used in making these determinations are complicated and have to be approved by the USDE. The department prefers a consistent approach be used in making these determinations so that state rules do not unintentionally conflict with the federally approved method.

Small Business Impact

The proposed rules will have no significant economic impact nor fiscal impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Fiscal Estimate***Assumptions used in arriving at fiscal estimate***

2009 Wisconsin Act 215 requires schools and school districts to implement certain provisions if they are considered in need of improvement for a certain period of time or are considered low performing. The Act also authorizes the state superintendent of public instruction to intervene in a school district if they are considered in need of improvement for a certain period of time or are considered low performing. The Act requires rules to establish criteria and procedures for determining whether a school or school district is in need of improvement and whether a school is among the lowest performing 5 percent of all public schools in the state. In promulgating these rules, the state superintendent is required to consult with the school district or school board president, the school district administrator, and labor organizations representing employees of each school district that is immediately affected by the Act and legislators whose legislative districts include any portion of each school district.

State fiscal effect

The school and school district identification criteria established in the rule will have no fiscal effect as the department already carries out these responsibilities under the No Child Left Behind Act. However, it is not possible to estimate the directives the department may issue under the Act or how much staff time would be required to ensure those directives are carried out properly by schools and school districts. To accomplish the purposes of the Act, work priorities within the department may need to change but it is assumed that such changes can be absorbed by existing staff. It is also assumed that the cost of writing and promulgating the rules required by this Act can be absorbed by the department.

Local government fiscal effect

The schools and school districts identified under the rule may have a fiscal effect associated with implementing the directives under the Act. However, because these schools and school districts receive federal funds to implement many of these provisions, any local costs, if any, are indeterminate. The department does not have data that would indicate the expense to those local schools or school districts.

Anticipated costs incurred by private sector

N/A.

Agency Contact Person

Scott Jones, Special Assistant
Office of the State Superintendent
Email : burton.jones@dpi.wi.gov
Phone: (608) 267-9269

Notice of Hearings**Public Instruction****CR 10-083**

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.28 (7) (a), 118.40 (2r) (a), 121.02 (1) (a) 2., and 227.11 (2) (a), Stats., the Department of Public Instruction will hold public hearings to consider proposed permanent rules amending Chapter PI 34, relating to educator preparation and licensing flexibility.

Hearing Information

Date: July 23, 2010
Time: 9:00 – 11:00 a.m.
Location: Madison
GEF 3 Building
125 South Webster Street
Room 041

Date: August 4, 2010
Time: 1:00 – 3:00 p.m.
Location: Chippewa Falls
CESA 10
725 West Park Avenue
Room BC

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Julie Brill, Director, Teacher Education, Professional Development and Licensing at julie.brilli@dpi.wi.gov or (608) 266-0986 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10

days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Proposed Rule

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.wi.gov or by writing to:

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

Submittal of Written Comments

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than **August 9, 2010**, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by Department of Public Instruction**Statute interpreted**

Sections 115.28 (7) (a), 118.19, 118.40 (2r) (a) and (d) 1., and 121.02 (1) (a) 2., Stats.

Statutory authority

Sections 115.28 (7) (a), 118.40 (2r) (a), 121.02 (1) (a) 2., and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 115.28 (7) (a), Stats., requires the state superintendent to license all teachers for the public schools of the state, make rules establishing standards of attainment and procedures for the examination and licensing of teachers within the limits prescribed in ss. 118.19 (2) and (3), 118.192 and 118.195, and prescribe by rule standards and procedures for the approval of teacher preparatory programs leading to licensure.

Section 118.40 (2r) (a), Stats., requires the department to promulgate rules to define the term “instructional staff” of charter schools established under s. 118.40 (2r), Stats.

Section 121.02 (1) (a) 2., Stats., requires the department to promulgate rules to define the term “instructional staff” in charter schools.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule

Section 118.40, Stats.

Plain language analysis

The department proposes modifying ch. PI 34, Wis. Admin. Code, to provide for educator license flexibility, clarification, and other minor revisions as follows:

Flexibility:

- Allowing IHE faculty to supervise clinical students or student teachers if they have experiences other than three years of PK-12 teaching experience.
- Allowing flexibility for students completing their student teaching placement outside the state of Wisconsin.

- Allowing a person holding a professional educator license in language arts (English literature and composition, journalism, speech or broadfield) to get another language arts license at the same developmental level if he or she completes a DPI prescribed exam.
 - Allowing a person holding a professional educator license in math or computer science to get a license in math or computer science at the same developmental level if he or she completes a DPI prescribed exam.
 - Allowing a person holding a professional educator license in science (physical science, chemistry, physics, earth and space, environmental, biology, or broadfield) to get another science license at the same developmental level if he or she completes a DPI prescribed exam.
 - Allowing a person holding a professional educator license in social studies (geography, history, political science, economics, psychology, sociology, or broadfield) to get another social studies license at the same developmental level if he or she completes a DPI prescribed exam.
 - Allowing a person holding a professional educator license in foreign language (French, German, Latin, Russian, Spanish, other) to get another foreign language license at the same developmental level if he or she completes a DPI prescribed exam.
 - Allowing a person holding a wide-range license (to teach all ages) to add another wide-range license in another subject based on a minor. This provision applies to specific licenses.
 - Changing the effective period of educational interpreters, school psychologists, and school guidance counselors licenses from 2 or 3 years to 5 years to give individuals enough time to complete stipulations that in some cases require evidence of successful work experience.
 - Requiring that persons teaching in core academic subjects in a charter school have a valid teaching license and one of the following: 1) a major or minor in the assigned subject area, 2) passed an examination prescribed by the department 3) complete a process that verifies content competencies authorized by the department. A school district may continue to request a charter school instructional staff license or permit on behalf of an individual. However, individuals will be required to submit a completed application for the license or permit. In addition, specific information relating to an applicant's specific teaching assignment and his or her qualifications will be required as part of the application process.
 - Moving the procedural requirements of requesting a charter school license from ch PI 8 to ch. PI 34 for consistency. These requirements include how to request the license and specifying that the individual must volunteer for the assignment in which the license is being requested. This is required, in part, so that these licenses will not be acquired for an individual without the individual's knowledge.
 - Modifying language under the charter permit. A charter permit may be issued to a person assigned to teach in the area of their degree that has not "completed an approved program" as opposed to an already licensed teacher who does "not hold a current license or permit." This subtle change is meant to direct fully licensed teachers that do not meet the new core academic subject license requirements to obtain a one-year emergency license instead of a one-year charter school permit.
 - Clarifying that professional educator licenses may be issued to teachers, administrators or pupil services personnel who completed an approved program either in WI or outside the state and have completed 5 years of teaching, pupil services or administrator experience out-of-state corresponding to their license. As currently written, the rules imply that a professional educator license may only be issued to teachers who completed an approved program out of state (rather than instate) and have at least five years of teaching experience out of state.
- Clarification/Minor Revisions:*
- Eliminating definitions that are not used in the rule and are, therefore, unnecessary.
 - Modifying definitions to clarify meaning or intent.
 - Defining "core academic subject" to reflect the definition of core academic subject under the federal No Child Left Behind Act (NCLB). Core academic subjects include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history and geography. The department has further clarified the "arts" as including music, theatre, and dance.
 - Changing the phrase "continuous process review" to "continuous review process" throughout the rule for clarification.
 - Clarifying that potential nonapproval of an institution of higher education's (IHE) professional program leading to licensure will come from the department rather than a department liaison or consultant.
 - Replacing the term "teaching practice" with "clinical program" throughout the rule as clinical program is a defined term and should be used consistently.
 - Specifying a different effective date/period for licenses issued to mid-term program completers.
 - Clarifying that an initial educator license may be issued to an individual who completed an approved program after August 31, 2004 (the date the new program requirements under ch. PI 34 became effective) for the first time in a license category.
 - Allowing an initial educator license to be renewed if the individual has not been employed as an educator for at least 3 years (rather than 2) within the 5-year period of issuance.
 - Clarifying that out of state teacher applicants may be issued a professional educator license (rather than an initial license) if they meet certain requirements.
 - Replacing the term "documentation portfolio" with "professional development plan" and three-member "panel" with "team" as the replacements are the appropriate terms to be used.
 - Clarifying that out-of-state applicants may receive an initial educator license in the areas of teaching, pupil services or administration. As currently written the rule appears to only allow for licensure of teachers that apply from out of state and not pupil services or administrator applicants.
 - Clarifying when the credits or professional development plan must be completed prior to renewing a professional educator license.
 - Clarifying that for applicants eligible to renew a professional educator license by completing 6 semester credits, those credits must be directly related to the license held or to the standards established under subchapter II for teachers, pupil services staff or administrators. As

currently written, the rule refers only to the teacher standards.

- Removing the provisions relating to issuing a license based on equivalency or experience from the initial educator license section and creating a new section for these provisions. As currently written, the rules imply that a license based on equivalency or experience may only be issued as an initial educator license.
- Clarifying that in order to extend an emergency and charter school permit, the applicant must complete at least 6 semester credits or equivalent coursework toward completion of an approved program in the subject or pupil services area of the emergency permit.
- Eliminating throughout the rule the list of “strands” which list specific subject requirements that must be completed in order to receive a license. Instead of listing strands, the rule will refer to the state’s model academic standards which will include the specific subject area requirements. Wisconsin is one of 48 states that have agreed to adopt a common set of standards for various subject areas.
- Clarifying that a program coordinator license is needed for individuals serving as career and technical education program coordinators.
- Clarifying that a person must have a professional educator license before being eligible for an administrator license.
- Clarifying that a person must complete a clinical program to receive a license as a coach, gifted and talented instructor, library media specialist or reading teacher.
- Creating language regarding virtual charter school licenses that mirrors statutory language.
- Updating application provisions and providing additional renewal options relating to educational interpreter deaf and hard of hearing licenses to better reflect current practice.
- Eliminating references to obsolete licenses (education for employment and local vocational education coordinator) that are no longer issued. It should be noted that although new licenses in these areas are no longer issued, any such valid licenses issued prior to the effective date of this rule are still effective and may be renewed.

Comparison with federal regulations

The federal No Child Left Behind (NCLB) Act requires 100 percent of public school teachers to be highly qualified in “core academic subjects” which are defined as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, music, art, theatre, dance, history and geography.

On June 3, 2008, the department notified all public schools, including charter schools, that in order to be considered highly qualified in the core academic subjects, an individual must 1) hold a valid teaching license in that subject or 2) hold any valid teaching license with a major or minor or passed the Praxis II content exam in the assigned core academic subject. The proposed rule codifies the requirements in that notice and provides a third option that the notice did not – that an individual complete a process authorized by the department that verifies content competencies. Formerly a charter school license was issued based solely on whether the applicant held any kind of teaching license; not subject–matter expertise. As a result, it is quite possible that holders of Wisconsin’s former charter school instructional staff license were not considered highly qualified under the NCLB.

Comparison with rules in adjacent states

Illinois:

- Common core state standards initiative. Illinois is one of 48 states that have agreed to adopt a common core of state standards for various subject areas.
- Core subject areas. Illinois lists the same core subject areas listed in this rule and further defines “fine arts” as including dance, drama, music and visual arts.
- Charter school teacher requirements in core subject areas. To teach a core subject, teachers must do one of the following: pass a content area test specific to the subject, complete a major or equivalent in the subject, hold a master’s or higher degree in a field directly related to the subject, hold a National Board for Professional Teaching Standards (NBPTS) or an Illinois master certificate or qualify under a point system. Teachers in charter schools must either meet the above requirements or hold a bachelor’s degree, passed the relevant content–area test in each core subject area of teaching responsibility and meet other requirements of Section 27A–10(c) of the School Code.
- Additional subject area licenses based on taking a test. A teacher can receive an endorsement in a foreign language by taking a test, with no coursework. Currently, a science or social science designation may be added by taking the test only, if the individual currently holds either an old narrow field or a broad field designation.
- License based on experience or equivalency. None.

Iowa:

- Common core state standards initiative. Iowa is one of 48 states that have agreed to adopt a common core of state standards for various subject areas.
- Core subject areas. Iowa defines core content standards as English and language arts, mathematics, science, social studies, and 21st century learning skills. The latter includes civic literacy, health literacy, technology literacy, financial literacy, and employability skills.
- Charter school teacher requirements in core subject areas. Iowa requires the licensure/certification of teachers in charter schools to be identical to those of all other public school teachers.
- Additional subject area licenses based on taking a test. Iowa does not offer state approved exams and requires an individual to finish regionally accredited coursework to add an endorsement.
- License based on experience or equivalency. None.

Michigan:

- Common core state standards initiative. Michigan is one of 48 states that have agreed to adopt a common core of state standards for various subject areas.
- Core subject areas. Michigan defines core academic curriculum content standards as follows: “Recommended model core academic curriculum content standards shall be developed and periodically updated by the state board, shall be in the form of knowledge and skill content standards that are recommended as state standards for adoption by public schools in local curriculum formulation and adoption, and shall be distributed to each school district in the state. The recommended model core academic curriculum content standards shall set forth desired learning objectives in math, science, reading, history, geography, economics, American government, and writing for all children at each stage of schooling and

be based upon the “Michigan K–12 program standards of quality”....

- Charter school teacher requirements in core subject areas. Michigan considers charter schools to be public schools. Therefore, the same certification laws apply to charters in the same fashion as any other public school. In essence, charter school teachers are required to hold a valid teaching certificate with endorsement in the subjects to which they are assigned to teach.
- Additional subject area licenses based on taking a test. Michigan requires an individual to complete a state approved endorsement program to receive licensure in an additional subject area.
- License based on experience or equivalency. Michigan has a new legislation providing for *alternative route certification*. Prerequisites must be met, including passage of the Michigan Test for Teacher Certification basic skills and content examinations before admission to the alternate route program is granted.

Minnesota:

- Common core state standards initiative. Minnesota is one of 48 states that have agreed to adopt a common core of state standards for various subject areas (except math).
- Core subject areas. Minnesota defines core academic subjects as language arts; mathematics; science; social studies, including history, geography, economics, and government and citizenship; health and physical education; and the arts.
- Charter school teacher requirements in core subject areas. Minnesota requires the licensure/certification of teachers in charter schools to be identical to those of all other public school teachers.
- Additional subject area licenses based on taking a test. Minnesota allows teachers in only the science subjects to get another science license based on taking a state approved test.
- License based on experience or equivalency. Minnesota has an active portfolio review process. Applicants must pay a \$500 fee. Also, applicants must have taught in the area of discipline and demonstrate competency standards.

Summary of factual data and analytical methodologies

Chapter PI 34 contains the requirements an individual must meet to be licensed as an educator in Wisconsin. It replaced Chapters PI 3 (containing the requirements an individual must meet to be licensed) in 2004 and PI 4 (containing the procedures and standards for approval of professional education programs leading to licensure) in 2000. Chapter PI 34 advanced licensure and educator preparation programs to be standards–based and competency–based rather than credit–based.

Since the passage of Chapter PI 34 ten years ago, changes in teaching, learning, and instructional delivery require further modification to Wisconsin’s licensure and educator preparation criteria. Also, modifications need to be made to clarify certain requirements. There is an increasing need for flexibility in licensure to allow rural schools to offer a full range of education offerings to students and allow teachers to more easily obtain licensure in other subjects while meeting the highly qualified teacher provisions under the federal No Child Left Behind Act.

These proposed changes aim to provide more tools to schools and flexibility to educators that at the same time ensure educator quality.

Small Business Impact

The proposed rules will have no significant economic impact nor fiscal impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Fiscal Estimate

Chapter PI 34 contains the requirements an individual must meet to be licensed as an educator in Wisconsin. The proposed changes aim to provide more tools to schools and flexibility to educators that at the same time ensure educator quality.

State fiscal effect

The rule provisions that are likely to have a state fiscal effect include:

- Validating discrete tests in each of the areas of language arts (English literature and composition, journalism, and speech), mathematics (or computer science), science (physical science, chemistry, physics, earth and space, environmental, and biology), and social studies (geography, history, political science, economics, psychology, and sociology). Currently, an individual takes a broadfield test in language arts, science or social studies to receive a specific license within that subject. The costs related to examination validation are indeterminate but will likely be absorbed by the agency. It is assumed that the Educational Testing Service will develop the discrete examinations at no cost to the department but may charge a fee to persons taking the test.
- Developing a process that verifies content competencies for charter school instructional staff teaching in core academic subjects and an equivalency process for individuals to obtain or add additional licenses. The department may solicit bids from higher education institutions and professional associations to plan and provide an appropriate evaluation process to establish the content competencies and equivalency requirements. If an appropriate evaluation process cannot be contracted, the department will have to develop such a process. The department will incur the costs of developing, delivering and administering the evaluation process. These costs are indeterminate. If the department is not able to absorb these costs, it may charge applicants an appropriate fee to cover the costs of the process.

It is unknown whether this rule will have a fiscal effect on the University of Wisconsin (UW) system. A copy of the proposed rules has been submitted to the UW system with a request for a fiscal note.

Local government fiscal effect

By making it easier for teachers to receive additional licenses, the proposed rules may provide flexibility for school districts in making teacher assignments utilizing current staff. Any cost savings associated with such flexibility are indeterminate.

Agency Contact Person

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**Notice of Hearing
Regulation and Licensing
CR 10–081**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 15.08 (5) (b), 51.30, 146.82, 227.11 (2) and 440.04, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to revise Chapter RL 7, relating to the Impaired Professionals Procedure.

Hearing Information

Date: August 6, 2010
Time: 9:00 a.m.
Location: 1400 East Washington Avenue
 Room 121A
 Madison, WI

Appearances at the Hearing and Submittal 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 Pamela Haack, Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708–8935. Written comments must be received by **August 9, 2010**, 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 440.03, Stats.

Statutory authority

Sections 15.08 (5) (b), 51.30, 146.82, 227.11 (2) and 440.04, Stats.

Explanation of agency authority

The Department of Regulation and Licensing is authorized under s. 440.03 (1), Stats., to promulgate rules defining uniform procedures to be used by the department and the attached boards, examining boards and affiliated credentialing boards.

Related statute or rule

Ch. RL 7.

Plain language analysis

These proposed rules modernize and clarify the language of ch. RL 7. Under the current rules, the Impaired Professionals Procedure is an alternative to the disciplinary process. Under the proposed rules, the renamed Professional Assistance Procedure may also be used in conjunction with the disciplinary process.

Comparison with federal regulations

None.

Comparison with rules in adjacent states

Illinois:

Each profession is managed independently of other professions. See also section 1285.235 of the Illinois Rules, Mandatory Reporting of Impaired Professionals by Health Care Institutions.

Iowa:

Iowa administrative code s. 653.14. http://php.iowa.gov/about_iphp.html. Section 653–14.5 (272C) defines who is deemed ineligible to participate in the program.

Michigan:

Section 333, Public Health Code. The Health Professional Recovery Program (HPRP) is administered by a private contractor under the direction of the HPRP and Bureau of Health Professions in the Michigan Department of Community Health. It is funded by participants and insurers. Several professions are included.

Minnesota:

MN Statutes s. 214.31–214–37. Includes the following professions: chiropractors, dentists, marriage and family therapists, nurses, pharmacists, podiatrists, social workers, veterinarians.

Summary of factual data and analytical methodologies

The Department of Regulation and Licensing created a Task Force consisting of various stakeholder organizations, including the Boards of Pharmacy, Nursing and Medicine, trade associations representing hospitals, doctors, nurses and pharmacists, the Wisconsin Association of Justice Representatives and experts in the treatment of alcohol and drug dependency. The Task Force met six times in 2009 to discuss improvements to the existing procedure. A committee of the Task Force then convened in 2009–2010 to draft the rule changes with the department. All aspects of the procedure were explored in the Task Force meeting, including its effectiveness, requirements for entry, confidentiality, length of participation, terminology, practice restrictions, therapist involvement, disciplinary action and oversight of treatment providers and facilities by department staff and board members. Reports on procedures in other states were presented to the Task Force, in addition to information relating to laboratory facilities and treatment resources.

Analysis and supporting documents used to determine effect on small business

The department does not anticipate a significant fiscal impact on small businesses. The changes are revisions to a program that is in operation and is funded by participants and license holders.

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.

Small Business Impact

After review by the department’s Small Business Review Advisory Committee, it was determined that these proposed rules will have no 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@drl.state.wi.us, or by calling (608) 266–8608.

Fiscal Estimate

This rule change will have no fiscal impact on the state of Wisconsin or on local units of government.

Anticipated costs incurred by the private sector

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

Agency Contact Person

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**Notice of Hearing
Transportation
CR 10-082**

NOTICE IS HEREBY GIVEN that pursuant to s. 84.01 (35) (c), Stats., the Department of Transportation will hold a public hearing to consider the creation of Chapter Trans 75, Wis. Adm. Code, relating to bikeways and sidewalks in highway projects.

Hearing Information

Date: August 4, 2010
Time: 10:00 a.m.
Location: Hill Farms State Transportation Bldg.
Room 144B
4802 Sheboygan Avenue
Madison, WI

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Thomas Huber at (608) 267-7757 with specific information on your request at least 10 days before the date of the scheduled hearing. Accommodations such as interpreters, English translators, or materials in alternative format will, to the fullest extent possible, be made available upon a request from a person with a disability to accommodate your needs.

Copies of Proposed Rule

A copy of the rule may be obtained upon request from Thomas Huber, Department of Transportation, Bureau of Planning and Economic Development, Room 901, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Mr. Huber by phone at (608) 267-7757 or via e-mail: thomas.huber@wisconsin.gov to obtain copies of the proposed rule. Copies will also be available at the hearing.

Submittal of Written Comments

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Thomas Huber, Department of Transportation, Bureau of Planning and Economic Development, Room 901, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Mr. Huber by phone at (608) 267-7757.

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

Analysis Prepared by Department of Transportation**Statutes interpreted**

Section 84.01 (35), Stats.

Statutory authority

Section 84.01 (35) (c), Stats.

Explanation of agency authority

2009 Wisconsin Act 28 created s. 84.01(35), Stats., which requires the Department of Transportation to ensure that bicycle and pedestrian facilities are included in all new highway construction and reconstruction projects funded in whole or in part from certain state funds or federal funds.

Related statute or rule

Section 84.013 and 340.01, Stats.

Plain language analysis

2009 Wisconsin Act 28 created s. 84.01(35), Stats., which requires the Department of Transportation to ensure that bicycle and pedestrian facilities are included in all new highway construction and reconstruction projects funded in whole or in part from certain state funds or federal funds, and sets forth five circumstances under which such facilities are not required. With minor exceptions, this law mirrors the "Complete Streets" policy recommended by the National Complete Streets Coalition, and supported by the Federal Highway Administration as a 'livability Initiative.' The Act requires the Department to promulgate rules detailing those circumstances. This proposed rule details those circumstances. Bicycle and Pedestrian facilities may be omitted from qualifying projects only if:

1. Bicyclists or pedestrians are prohibited by law from using the highway that is the subject of the project. Highway authorities have specific statutory authority to limit highway access by bicycles and pedestrians, and this proposed rule enumerates those authorities.
2. The cost of establishing bikeways or pedestrian ways would be excessively disproportionate to the need or probable use of the bikeways or pedestrian ways. Under statutes, costs are excessively disproportionate if the cost of the bicycle or pedestrian facility exceeds 20 percent of the total project cost. This proposed rule uses the cost estimates for the construction of the entire project, including bicycle and pedestrian facilities, but excludes design costs and real estate costs, which are difficult to determine at the point that bicycle facilities or sidewalks are being considered. It compares the cost of the bicycle and pedestrian facilities and allows a highway authority to omit either or both if the costs are 20% or more. In some cases, the cost of providing either a bicycle or pedestrian facility might be completed for less than 20% of total project costs, so this proposed rule considers these facilities separately, to require spending up to 20% of total project costs on bicycle or pedestrian facilities, or both. The proposed rule prioritizes sidewalks, but allows the highway authority to choose whichever facility it determines provides the best value. The rule also considers the bicycle or pedestrian facility cost to be only the marginal cost (the costs not otherwise required for the roadway project) of adding or expanding any bicycle or

pedestrian facility. Whenever additional real estate must be purchased, the rule considers which facility (travel lane, bikeway or sidewalk) is the primary demand for more real estate and apportions those real estate costs accordingly. Bikeways and sidewalks typically lie at the outermost edge of a highway and are most likely to lie on any newly-acquired real estate, but real estate costs are not properly attributable to those facilities if existing highway right-of-way is sufficient for them and where, for example, the demand for an additional travel lane is ‘crowding out’ the sidewalk or bikeway.

3. Establishing bikeways or pedestrian ways would have excessive negative impacts in a constrained environment. The proposed rule defines a constrained environment to be any location in which the addition of standard-width bicycle and pedestrian facilities would require the destruction of any building or other structure, improvement or landscaping adjacent to the highway, where such destruction would dramatically reduce the aesthetic value or functionality of the remaining area, or where the environmental documentation process shows would result in an unreasonable loss of natural resources, or sites of historical or archeological significance. The proposed rule specifies minimum widths of the bicycle or pedestrian facilities, and allows them to be narrowed, within limits, to fit within the area available for them.

Where real estate is acquired for a new or widened travel lane in a constrained environment, the ‘constraint’ might be eliminated. In such cases, the highway authority shall consider whether the area remains a constrained environment after real estate is acquired.

4. There is an absence of need for the bikeways or pedestrian ways, as indicated by sparsity of population, traffic volume, or other factors. The proposed rule distinguishes between development densities and land uses and allows the omission of bicycle and pedestrian facilities in areas that typically have little bicycle or pedestrian use and where future growth is not expected. The proposed rule does not allow omission of these facilities in any ‘urban area’ or ‘semi-urban district’ under this exception, regardless of existing demand for those facilities.
5. The community where pedestrian ways are to be located refuses to accept an agreement to maintain them. This exception applies only where the local government lacks snow and ice removal equipment required to maintain the facilities and where these types of facilities do not exist and are not required. The proposed rule specifies that pedestrian facilities cannot be omitted from any national highway system project due to the absence of any maintenance agreement.

Finally, the proposed rule requires documented justification for omitting these facilities due to excessive costs, and requires the Department to approve that justification and omission, as a condition of receiving state and federal funds for the underlying highway project. For bikeways or sidewalks omitted for reasons other than excessive costs, the rule allows the department to request written justification for the omission and, if requested, prohibits the department from funding the highway project unless the department approves the omission and justification. The proposed rule also requires local highway authorities to agree, in writing, to maintain any sidewalks included in all new highway construction and reconstruction

projects subject to this proposed rule, as a condition of eligibility for federal funds for that project.

Comparison with federal regulations

Federal regulations require the Department to give full consideration to the safe accommodation of pedestrians and bicyclists during the development of Federal-aid highway projects, and during the construction of such projects. The same regulations make qualifying bicycle and pedestrian facilities eligible for federal highway funds. 23 USC 217(g).

On February 28, 2000, the Federal Highway Administration issued “A U.S. DOT Design Policy: Integrating Bicycling and Walking Into Transportation Infrastructure” which sets forth a policy for the inclusion of bicycle and pedestrian facilities in federally-funded transportation projects, as required by TEA-21 and codified at 23 USC 217. On March 15, 2010, the U.S. Department of Transportation announced a new policy “to incorporate safe and convenient walking and bicycling facilities into transportation projects” and encouraging states, local governments, and others to go beyond minimum design standards and requirements to create safe, attractive, sustainable, accessible, and convenient bicycling and walking networks. The policy finds its authority in numerous congressional laws and federal regulations, including federal highway planning requirements and provisions for non-motorized highway users, prohibitions against ‘route severance’ in which highway projects leave unconnected remnant facilities, and pedestrian accessibility requirements under the Americans with Disabilities Act. The Federal Highway Administration has issued various policy guidance memoranda to implement these policies.

The recently enacted Wisconsin law, s. 84.01 (35), Stats., appears consistent with the federal guidelines, except that state law includes two exceptions not expressly authorized under federal policy. First, the state exception for sidewalks where the local governmental unit refuses to accept responsibility for maintenance is not authorized by federal law and cannot be used on any highway that is part of the national highway system. Omitting sidewalks from these projects for this reason may cause the federal government to decline federal funds for the project. Accordingly, this proposed rule makes this exception inapplicable on any project on the national highway system. Next, the state exception for excessive negative impacts in a constrained environment is not expressly authorized, but may be permissible under federal policy if these considerations are properly addressed in the environmental review process for the overall project.

Comparison with rules in adjacent states

None of the states appear to have promulgated “Complete Streets” rules, though all states have some laws and regulations relating to bicycle and pedestrian accommodations along highways.

Michigan:

Michigan has adopted no administrative rules implementing the federal “Complete Streets” regulations and policy. Various municipalities within Michigan have adopted policies implementing “Complete Streets,” including Ann Arbor.

Minnesota:

Minnesota statute 160.262 requires the Minnesota Department of Transportation to adopt model standards for

the establishment of recreational vehicle lanes on and along proposed and existing public highways. The law requires the model standards to include the following: (a) criteria for desirability of a lane in any given location, (b) provision for maintenance of the lanes, and (c) the placement of the lanes in relation to roads. The model standards govern state trunk highways, but could be applied to local roads, or modified to fit local circumstances, if local highway authorities so choose.

Minnesota has rules establishing “Criteria For Desirability Of Lanes” for use by bicycles and pedestrians. The rules, at ch. 8810.6300 Minn. Admin. Code, provide the circumstances under which the Department will consider adding lanes as part of a project, but do not seem to require those facilities. The rules list 12 factors to consider that could affect a decision to include bicycle or pedestrian lanes.

Illinois:

Illinois has enacted at 605 ILCS 30 a statute called “The Bikeway Act” administered by the Illinois Department of Transportation. The Bikeway Act authorizes the construction and designation of bikeways, but does not appear to require the inclusion of bikeways in highway projects. The Illinois Department of Transportation has adopted a policy of Bicycle and Pedestrian Accommodations dated May 1, 2002, available at: <http://dot.state.il.us/desenv/BDE%20Manual/BDE/pdf/chap17.pdf>.

The policy follows the American Association of State Highway and Transportation Officials’ (“AASHTO”) publication “Guide for the Development of Bicycle Facilities” as the basis for design guidance. Further guidance is provided in the FHWA publication “Selecting Roadway Design Treatments to Accommodate Bicycles.” In general, the policy seems to require only that highway officials “Consider accommodating bicycles and pedestrians on all projects,” except controlled access highways and pavement resurfacing projects that not widen the roadway. The policy establishes five warrants that, if present, require the inclusion of bicycle facilities in a highway project. The policy establishes six warrants that, if present, will make pedestrian accommodations “considered appropriate if they are not already available.” Illinois’ Department of Natural Resources also administers the “Illinois Bicycle Path Grant Program” under Title 17, Section 3040, Ill. Adm. Code. The purpose of the program is to provide financial assistance to eligible local units of government to assist them in the acquisition, construction, and rehabilitation of public *off-road*, non-motorized bicycle paths and directly-related facilities in Illinois.

Iowa:

On February 22, 2010, an Iowa legislator introduced House File 2506, which would enact “Complete Streets” legislation. The bill was referred to committee with no further action taken. The Iowa Administrative Code, s. 761—150.4(306), requires the replacement of existing routes moved as result of a highway project on a ‘primary road,’ and requires the Iowa Department of Transportation to “consider the impacts to pedestrian accommodation at all stages of the project development process and encourage pedestrian accommodation efforts when pedestrian accommodation is impacted by highway construction.” The administrative code makes bicycle and pedestrian facilities eligible for highway funding whenever included as part of a highway project, but does not otherwise appear to require they be included.

Summary of factual data and analytical methodologies

This rule is proposed as required by s. 84.01 (35) (c), Stats. The rule is consistent with the Department’s design criteria for bicycle and pedestrian facilities as published in the “Facilities Development Manual.”

Analysis and supporting documentation used to determine effect on small businesses

This proposed rule neither requires nor prohibits any action on the part of any small business, and the Department foresees no direct or indirect impact on any small business as result of this proposed rule. There may be indirect cost increases on small businesses that own or lease property fronting a highway, as a result of the statute that requires the addition of sidewalks on certain highway projects. This rule will not impose any indirect costs on any small business, as it provides only exceptions under which sidewalks and bikeways may be omitted from certain highway projects.

Small Business Impact

This proposed rule has no effect on small business.

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

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. This proposed rule provides the exceptions under which sidewalks and bikeways may be omitted from certain highway projects. Any highway authority wishing to omit a sidewalk or bikeway from a highway project may incur some expenses in determining whether that facility is eligible for omission under this rule and, in some cases, to document eligibility or to apply for Department approval of that omission. Omitting a sidewalk or bikeway required by statute, following the procedures created by this rule, may require, for example, calculating the cost of adding a sidewalk or bikeway to determine whether it is excessively costly as compared with total estimated project costs. In effect, the only costs associated with the rule are those incurred in order to determine whether the highway authority can avoid the greater costs of adding sidewalks or bikeways required under statute. Local governmental units can avoid any costs associated with this rule by including sidewalks and bikeways in all qualifying highway projects, as required by statute.

Anticipated costs incurred by private sector

The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities as result of this proposed rule. Any costs borne by state or private sector revenues are the product of a statute that requires the addition of sidewalks and bikeways in certain highway projects. That statute may require the addition of sidewalks abutting business property, which may result in the local governmental unit imposing special assessments for sidewalks.

Agency Contact Person

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Submittal of Proposed Rules to the Legislature

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

Children and Families
Safety and Permanence, Chs. DCF 37–59
CR 10–021

A rule-making order to revise Chapters DCF 56 and 58, relating to foster care and kinship care.

Children and Families
Early Care and Education, Chs. DCF 201–252
CR 10–056

A rule-making order to revise Chapter DCF 201, relating to authorized hours of subsidized child care.

Financial Institutions — Securities
CR 10–062

A rule-making order to revise Chapters DFI–Sec 1, 2, 4, 5, 7, 8, and 32, relating to minor revisions to securities and franchise law.

Health Services
Health, Chs. DHS 110—
CR 10–034

A rule-making order to revise Chapter DHS 131, relating to hospices.

Insurance
CR 10–043

A rule-making order to create section Ins 3.36, relating to autism spectrum disorders.

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 10–052

(DNR # WM–15–10)

A rule-making order to amend section NR 10.104 (7) (a), relating to use of the archery deer hunting license.

Natural Resources
Environmental Protection — Hazardous Waste Management, Chs. NR 600—

CR 10–036

(DNR # WA–30–09)

A rule-making order to amend section NR 660.10 (107) and to create section NR 660.10 (70m), relating to hazardous waste management.

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.

Children and Families

Safety and Permanence, Chs. DCF 37-59

CR 10-028

Creates Chapter DCF 35, relating to home visitation to prevent child abuse and neglect.
Effective 9-1-10.

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5

CR 09-028

Revises Chapter Comm 5, relating to licensing of electricians.
Effective 9-1-10 and 4-1-13.

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100-

CR 10-007

Creates Chapter Comm 134, relating to meat processing facility investment credits.
Effective 9-1-10.

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100-

CR 10-008

Revises Chapter Comm 132, relating to dairy manufacturing facility investment credits.
Effective 9-1-10.

Employee Trust Funds

CR 10-004

Revises Chapters ETF 10, 20, 40, 41, and 60, relating to domestic partner benefits and the expansion of health insurance coverage to adult dependents up to the age of 27 years.
Effective 8-1-10.

Insurance

CR 10-026

Revises section Ins 2.81, relating to use of the 2001 CSO Preferred Class Structure Mortality Table in determining reserve liabilities.
Effective 9-1-10.

Public Notices

Department of Children and Families

Notice of Available Funding under 2009 Wisconsin Act 333

On July 1, 2010, the Department of Children and Families determined that expansion of the trial jobs program under s. 49.147 (3), Stats., as affected by 2009 Wisconsin Act 333, and the transitional jobs demonstration project under s. 49.162, Stats., as affected by 2009 Wisconsin Act 333, is the preferred mechanism for obtaining some or all of available federal moneys from the Temporary Assistance for Needy Families Emergency Fund under the American Recovery and Reinvestment Act of 2009.

The changes to ss. 49.147 (3) and 49.162, Stats., as affected by 2009 Wisconsin Act 333, are effective July 1, 2010.

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