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Emergency Rules Now in Effect

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection

Rules adopted revising **ch. ATCP 10**, relating to diseases of fish and farm-raised deer.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including programs to control diseases of fish and farm-raised deer.

Disease Testing of Fish

(2) DATCP regulates fish farms, including fish farms operated by the Wisconsin Department of Natural Resources (“DNR”). DATCP also regulates the import, movement and disease testing of fish.

(3) Viral hemorrhagic septicemia (VHS) is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Morts (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms. VHS can be fatal to fish, but is not known to affect human beings.

(4) Current DATCP rules require health certificates for fish and fish eggs (*including bait*) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish and fish eggs (*including bait species*) moved between fish farms in this state. *Import* health certificates must include VHS

testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources, for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between fish farms in Wisconsin, or for non-salmonids imported from states where VHS has not yet been found.

(5) Because VHS has now been found in waters of the state, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to adopt VHS testing requirements by emergency rule, pending the adoption of a “permanent” rule.

Disease-Free Herd Certification of Farm-Raised Deer Herds

(6) DATCP registers farm-raised deer herds in this state. DATCP also regulates the import, movement and disease testing of farm-raised deer. Under current DATCP rules, DATCP may certify a deer herd as brucellosis-free or tuberculosis-free, or both, based on herd test results provided by the deer keeper. Certification is voluntary, but facilitates sale and movement of deer.

(7) Under current rules, a tuberculosis-free herd certification is good for 3 years, but a brucellosis-free herd certification is good for only 2 years. There is no compelling veterinary medical reason for the difference. A rule change (extending the brucellosis-free certification term from 2 to 3 years) is needed to harmonize the certification terms, so that deer farmers can conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. An emergency rule is needed to avoid some unnecessary costs for deer farmers this year, pending the adoption of permanent rules.

Publication Date: October 31, 2007

Effective Date: October 31, 2007

Expiration Date: March 29, 2008

Commerce (Licenses, Certifications, etc., Ch. Comm 5)

Rules adopted revising **ch. Comm 5**, relating to licensing of elevator contractors and installers.

Exemption From Finding of Emergency

Under the nonstatutory provisions of 2005 Wis. Act 456, the Department of Commerce was directed to issue emergency rules that implement provisions of the Act. The Act specifically states: “Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of commerce is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection.”

The Act mandates the licensing of elevator contractors and installers. Under the Act no person may engage in the business of installing or servicing conveyances or working on a conveyance unless licensed as of June 1, 2007. These emergency rules are being adopted in order to provide the

elevator industry the ability to comply with licensing aspects of the Act and continue working until permanent rules are implemented.

Publication Date: June 1, 2007
Effective Date: June 1, 2007
Expiration Date: See section 7 (2), 2005 Wis. Act 456
Hearing Date: June 27, 2007

Commerce (Amusement Rides, Ch. Comm 34)

Rule adopted creating s. **Comm 34.22 (5m)**, relating to amusement ride safety.

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. An amusement ride fatality occurred in Wisconsin on July 14, 2007. The ride involved the field attachment of passengers who don harnesses and then are elevated off the ground.

2. Although no mechanical or equipment failure contributed to the incident, attachment and connection practices of the operators did not incorporate safety practices used on some similar rides in the industry.

3. The department recognizes that without promulgating this emergency rule, there could be confusion in what constitutes a recognized safe practice for the field attachment or connection of harnessed passengers on similar amusement rides. The department believes clarifying the code will promote safety.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and the Revisor of Statutes.

Publication Date: August 13, 2007
Effective Date: August 13, 2007
Expiration Date: January 10, 2008
Hearing Date: October 15, 2007

Commerce (Financial Resources for Businesses and Communities, Chs. Comm 104–131)

Rules adopted creating **ch. Comm 135**, relating to tax credits and exemptions for internet equipment used in the broadband market.

Exemption From Finding of Emergency

These rules establish the criteria for administering a program that will (1) certify businesses as temporarily eligible for tax credits and exemptions for Internet equipment used in the broadband market, and (2) allocate up to \$7,500,000 to these businesses for these tax credits and exemptions.

Pursuant to section 227.24 of the statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper. In accordance with section 17 (1) (d) of 2005 Wisconsin Act 479, this rule will remain in effect until January 1, 2008, or until the Department reports its certifications and determinations under this rule to the Department of Revenue, whichever is sooner.

The rules specify who is eligible for the income and franchise tax credits and the sales and use tax exemptions in this program, for Internet equipment used in the broadband market. Eligible equipment is also specified, along with how to apply for the certifications and allocations. Parameters for allocating the authorized total of \$7,500,000 are likewise specified. These parameters emphasize (1) efficiently initiating broadband Internet service in areas of Wisconsin that otherwise are not expected to soon receive this service, and (2) encouraging economic or community development. The rule chapter also describes the time-specific legislative oversight that is established in 2005 Act 479 for these allocations, and describes the follow-up reports that the Act requires from every person who receives a sales or use tax exemption under this chapter.

Publication Date: February 20, 2007
Effective Date: February 20, 2007
Expiration Date: See section 17 (1) (d) 2005 Wis. Act 479
Hearing Date: March 26, 2007

Dentistry Examining Board

Rule adopted amending the effective date of CR 04–095, by amending the emergency rule that took effect on December 29, 2006, relating to the requirements for administering the office facilities and equipment for safe and effective administration and the applicable standards of care, and to provide for reporting of adverse occurrences related to anesthesia administration.

Finding of Emergency

The board has made a finding of emergency. The board finds that failure to delay the effective date of CR04–095, from July 1, 2007 to November 1, 2007 will create a danger to the public health, safety and welfare. The extra four months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients. The rules created a course requirement for receiving a conscious sedation permit that did not exist. Courses have and are being developed to meet this requirement. By November 1, 2007, the course will have been available to enough dentists to ensure the continuation of the use of conscious sedation.

Publication Date: June 24, 2007
Effective Date: July 1, 2007
Expiration Date: November 28, 2007
Hearing Date: July 11, 2007

Elections Board

Rules adopted creating **s. EIBd 3.50**, relating to pricing of voter information available from the Statewide Voter Registration System.

Exemption From Finding of Emergency

The Elections Board finds that under Section 180 of the non-statutory provisions of 2005 Wisconsin Act 451, in

subsection (4), the Elections Board may promulgate emergency rules under s. 227.24, Stats., implementing s. 6.36 (6), Stats., as created by Wisconsin Act 451. Notwithstanding s. 227.24 (1) (c) and (2), Stats., emergency rules promulgated under subsection (4) remain in effect until the date on which permanent rules take effect. Notwithstanding s. 227.24 (1) (a) and (3), Stats., the Elections Board is not required to provide evidence that promulgating a rule under subsection (4) 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 subsection (4).

This amended rule interprets ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats. The rule requires that persons who request copies of information from the Statewide Voter registration System must pay, for each such copy, a charge calculated under the provisions of the rule.

At the present time, the Elections Board is limited, in the fee that it can charge for information provided by the Statewide Voter registration System, to the fee set by s. 19.35 (3), Stats.: “the actual, necessary, and direct cost of reproduction and transcription of the record.” In order to recover both the cost of reproduction and the cost of maintaining the list at the state and local level, rather than having its charge be limited to the amount currently provided under the public records law, the Board needs an immediate rule reflecting both cost components required by the new statute.

Publication Date: May 12, 2007
Effective Date: May 12, 2007
Expiration Date: See section 180 (4), 2005 Wis. Act 451
Hearing Date: June 11, 2007

Natural Resources (3) (Fish and Game, etc., Chs. NR 1—)

- Rules adopted amending s. NR 20.20, relating to the hook and line harvest of lake sturgeon.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary to prevent excessive harvest of lake sturgeon from the inland waters of Wisconsin during the 2007 hook and line season.

Publication Date: July 23, 2007
Effective Date: July 23, 2007
Expiration Date: December 20, 2007
Hearing Date: August 13, 2007

- Rules adopted amending ss. NR 10.01 (1) (v), 10.12 (5) (d) and 10.15 (6); and to repeal and recreate s. NR 10.01 (1) (b), (g) and (u), relating to the 2007 migratory game bird seasons and waterfowl hunting zones.

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. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: August 30, 2007
Effective Date: August 30, 2007
Expiration Date: January 27, 2008
Hearing Date: October 19, 2007

- Rules adopted affecting chs. NR 19 and 20, relating to control of fish diseases and invasive species.

Finding of Emergency

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

The World Health Organization for Animal Health (OIE) lists Viral Hemorrhagic Septicemia (VHS) as a “notifiable” disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts (part of the Lake Winnebago system) were infected with the VHS virus. On May 23, May 24, and June 1, respectively, the Department learned that brown trout from Lake Michigan, smallmouth bass from Sturgeon Bay, and lake whitefish from Lake Michigan had tested positive for the virus.

Earlier, VHS had been discovered in the Great Lakes, and was known to be moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage basin. Information obtained pursuant to an emergency rule that took effect May 17 revealed that 88 bait dealers harvest live wild minnows from a large number of state waters, including waters that are near or connected to the Mississippi river, the Lake Winnebago system, Green Bay and Lakes Michigan and Superior.

Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. It is expected the USDA APHIS will soon expand its emergency order limiting the interstate transportation of these species to apply to all fish species. The VHS virus can be transported from infected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in Wisconsin is therefore a threat to the public health or safety or to the environment.

Publication Date: November 2, 2007
Effective Date: November 2, 2007
Expiration Date: March 31, 2008

Natural Resources (2)
(Environmental Protection – Water Regulation, Chs. NR 300–)

1. Rules adopted revising **ch. NR 345**, relating to general permits for dredging in Great Lakes navigable waterways.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits for dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove algae, mussels, dead fish and similar large plant and animal nuisance deposits. Without emergency rules to create general permits, all dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits require an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision–making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2007 summer season, with specific standards for operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits.

Publication Date: June 10, 2007
Effective Date: June 10, 2007
Expiration Date: November 7, 2007
Hearing Date: July 10, 2007
Extension Through: January 5, 2008

2. Rules adopted revising **chs. NR 320, 323, 328, 329, 341, 343 and 345**, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits standards that require decontamination of equipment for

invasive species and viruses. Without emergency rules to create new general permit standards, any condition imposed would be limited to individual permits only with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision–making but not diminish the public trust in state waters, these emergency rules are required to establish general permits standards to be in effect for the 2007 summer season, with specific standards that require decontamination of equipment for invasive species and viruses.

In addition, The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a “notifiable” disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large–scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty–seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

Publication Date: July 12, 2007
Effective Date: July 12, 2007
Expiration Date: December 9, 2007
Hearing Date: August 13, 2007

Natural Resources
(Environmental Protection – Air Pollution Control, Chs. NR 400–)

Rules adopted creating **s. NR 462.015**, relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business.

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. Preservation of the public welfare necessitates putting the rule into effect prior to the time that it would take if the department complied with the normal procedures. Federal regulations that are the basis for ch. 462, Wis. Adm. Code, were vacated on July 30, 2007 by the U.S. Court of Appeals. Both the vacated federal regulations and ch. NR 462 contain a date for compliance of September 13, 2007. This order is designed to bring state rules into conformity with the court–ordered vacatur of the federal regulations. Normal rule–making procedures will not allow implementation of ch. NR 462 to be stayed before September 13, 2007.

Publication Date: September 13, 2007
Effective Date: September 13, 2007
Expiration Date: February 10, 2008
Hearing Date: October 26, 2007

Publication Date: September 8, 2007
Effective Date: September 10, 2007
Expiration Date: February 7, 2008

Regulation and Licensing

Rules adopted creating **chs. RL 160, 161, 162, 163, 166, 167, and 168**, relating to substance abuse professionals.

Exemption From Finding of Emergency

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

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and Other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval, and professional liability insurance for substance abuse professionals. Please refer to the “Summary of factual data and analytical methodologies” section and the section on “Analysis and supporting documentation used to determine effect on small business or in preparation of economic impact report.”

Chapter RL 160 is being created to include definitions of terms that are used in subch. VII of ch. 440, Stats., and in chs. RL 160 to 167. The proposed rules include definitions for “accredited,” “assessment,” “behavioral science field,” “CEH,” “clinical substance abuse counselor,” “clinical supervision,” “clinical supervisor,” “clinical supervisor-in-training,” “comprehensive program,” “core functions,” “credential,” “department,” “DSM,” “hour,” “independent clinical supervisor,” “intermediate clinical supervisor,” “patient,” “practice dimensions,” “prevention,” “prevention domains,” “prevention specialist,” “prevention specialist-in-training,” “substance,” “substance abuse counselor,” “substance abuse counselor-in-training,” “substance use disorder” and “transdisciplinary foundations.”

Chapter RL 161 is being created to identify the requirements and procedures for submitting applications for licenses.

Chapter RL 162 is being created to identify the restrictions and minimum requirements for supervision of counselors by clinical supervisors.

Chapter 163 is being created to identify the scope and restrictions on the practice of the credential holders.

Chapter RL 166 is being created to identify the approval process and educational requirements for educational coursework and continuing education opportunities.

Chapter RL 167 is being created to require credential holders to have liability insurance in effect.

Chapter RL 168 is being created to identify the requirements for continuing education.

Revenue (2)

1. Rules adopted amending **s. Tax 2.505**, relating to the computation of the apportionment fraction by multistate professional sports clubs.

Finding of Emergency

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

The emergency rule is to prescribe the method to be used for apportioning the apportionable income of interstate professional sports clubs.

It is necessary to promulgate this rule order to provide the method of apportionment to be used by interstate professional sports clubs.

Publication Date: October 12, 2007
Effective Date: October 12, 2007
Expiration Date: March 10, 2008

2. A rule was adopted revising **s. Tax 8.63**, interpreting s. 125.54 (7), Stats., relating to liquor wholesale warehouse facilities.

Finding of Emergency

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

The emergency rule is to change the amount of floor space that a liquor wholesaler warehouse facility described in a wholesalers’ permit is required to be from 4,000 to 1,000 square feet of floor space. It also creates a provision that allows the minimum square footage requirement to be waived when it is determined that a waiver is fair and equitable.

It is necessary to promulgate this rule order to remove the threat of revenue loss to bona fide liquor wholesalers as a result of having applications for issuance or renewal of permits denied solely because they do not meet the square footage requirement in the existing rule.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and Revisor of Statutes, as provided in s. 227.24, Stats.

Publication Date: October 29, 2007
Effective Date: October 29, 2007
Expiration Date: March 27, 2008

Workforce Development (Family Support, Chs. DWD 12 to 59)

Rules adopted revising **ch. DWD 56**, relating to child care enrollment underutilization.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and a rule is necessary for the immediate

preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The child care subsidy budget is expected to have a substantial deficit by the end of state fiscal year 2006–07. While many factors will have an impact on the program’s final fiscal balance, current spending patterns at current rates suggest that the program will exceed its 06–07 budget authorization by approximately \$46 million. This rule will

provide for more efficient use of the program’s limited funding.

Publication Date: April 1, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007
Hearing Date: June 20, 2007
Extension Through: October 27, 2007

Scope Statements

Commerce

Subject

The rules affect chs. Comm 2, 5, and 16, relating to electrical construction, certification and inspection.

Objective of the Rule

The objective of the proposal, in keeping with the statutory requirement to use nationally recognized standards, is to update Chapter Comm 16, Electrical Code, incorporating by reference the 2008 edition of the National Electrical Code (NEC) published by the National Fire Protection Association (NFPA) as NFPA standard No. 70.

The rule may also address administrative issues related to electrical inspection, certification and associated fees in order to comply with the statutory mandate for inspection of electrical construction in those municipalities which have not adopted and enforced ordinances providing for inspection of electrical construction.

Policy Analysis

The state electrical code has incorporated the NEC by reference since 1972. Currently, the 2005 edition of the NEC is referenced by Chapter Comm 16. This rule project will update the state electrical code to the 2008 edition of the NEC while evaluating the electrical requirements in Chapter 16 that add to or modify the requirements in the NEC.

The department has provided limited electrical inspection along with consultation on the electrical code. The topic of increased electrical inspection will be considered and discussed along with creation of administrative rules in keeping with the statutory mandates for the protection of public health and safety.

The alternative of not updating these rules would result in chapter Comm 16 not being up-to-date with current nationally recognized standards for the design, installation and operation of electrical conductors and equipment in all buildings and structures and an inspection program that fails to fulfill the statutory objectives of Chapter 101, Stats.

Statutory Authority

The statutory authority for Chapter Comm 16 is contained in ss. 101.63 (1), 101.73 (1), 101.82 (1), Stats. The statutory authority for electrical inspection and associated fees is contained in ss. 101.19 (1) and 101.82 (3m) and (4), Stats.

Entities Affected by the Rule

These rules will affect any building, structure or premises where the installation of electrical wiring will be undertaken, other than those buildings, structures or premises regulated by the Public Service Commission. The rule will also affect any designer, installer or inspector of electrical wiring along with owners and frequenters of buildings, structures or premises where electrical wiring is installed.

Comparison with Federal Regulations

There are several existing federal regulations that relate to the installation of electrical wiring and equipment. Some of these regulations require compliance with various editions of the National Electrical Code (NEC). An internet-based

search of the *Code of Federal Regulations* (CFR) found the following existing federal regulations relating to the activities to be regulated by the rule.

- Title 7 CFR Part 1755—Telecommunications Standards and Specifications for Materials, Equipment and Construction. This regulation in the Department of Agriculture applies to telecommunications wiring and equipment, and requires compliance with the 1993 NEC.
- Title 24 CFR Part 3280—Manufactured Home Construction and Safety Standards Subpart I—Electrical Systems. This regulation in the Department of Housing and Urban Development covers electrical systems in manufactured homes, and requires compliance with the 2005 NEC.
- Title 29 CFR Part 1910—Occupational Safety and Health Standards. Subpart S of this regulation in the Department of Labor contains detailed electrical safety requirements that are necessary for the practical safeguarding of employees in their workplaces.
- Title 29 CFR Subpart 1926—Safety and Health Regulations for Construction. Subpart K of this regulation in the Department of Labor contains detailed electrical safety requirements that are necessary for the practical safeguarding of employees involved in construction work.
- Title 30 Part 57—Safety and Health Standards—Underground Metal and Nonmetal Mines. Subpart K of this regulation in the Department of Labor contains specific electrical safety requirements for the protection of employees working in underground metal and nonmetal mines.
- Title 30 Part 75—Mandatory Safety Standards—Underground Coal Mines. Subpart F of this regulation in the Department of Labor contains specific electrical safety requirements for the protection of employees working in underground coal mines.

The Occupational Safety and Health Administration (OSHA) revised the general industry electrical installation standard found in Subpart S of 29 CFR Part 1910, effective on August 13, 2007. The Agency determined that electrical hazards in the workplace pose a significant risk of injury or death to employees, and that the requirements in the revised standard, which draw heavily from the 2000 edition of the National Fire Protection Association's (NFPA) Electrical Safety Requirements for Employee Workplaces (NFPA 70E), and the 2002 edition of the National Electrical Code (NEC), are reasonably necessary to provide protection from these hazards. This revised standard focuses on safety in the design and installation of electric equipment in the workplace.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rules is expected to be approximately 700 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 develop the rules.

Natural Resources

Subject

The rules affect chs. NR 20 and 21, relating to the inland and WI/MN boundary water hook and line harvest of lake sturgeon.

Objective of the Rule

This proposal recommends increasing the minimum length limit from 50" to 60" and reducing the season length from 6 weeks to 4 weeks.

Policy Analysis

To reduce harvest, an emergency rule was put in place for the 2007 hook and line season. The Department will be proposing a similar permanent rule.

Statutory Authority

Sections 29.014, 29.041, 227.24, and 29.192, Stats.

Entities Affected by the Rule

Recreational anglers (resident and nonresident) and the small businesses (bait shops, sporting goods and convenience stores) that support lake sturgeon fisheries will be affected by the proposed rule.

Comparison with Federal Regulations

Authority to promulgate fishing regulations is granted to states. No federal regulations apply to the proposed changes in regulating recreational fishing activities.

Estimate of Time Needed to Develop the Rule

The Department anticipates spending approximately 40 hours in the rule development process.

Agency Contact Person

Questions may be addressed to:

Mike Staggs
101 S. Webster Street
PO Box 7921
Madison, WI 53707–7921
(608) 267–0796 or Mike.staggs@wisconsin.gov

Natural Resources

Subject

The rules will affect chs. NR 107, 109 and 345, relating to general permit standards to allow operation of a motor vehicle on the beds of outlying waters.

Objective of the Rule

The Department is proposing to revise chs. NR 107, 109 and 345, Wis. Adm. Code, to create three new general permits for dredging. The three general permits include authorization for the operation of a motor vehicle, on the beds of "outlying waters" (as defined in s. 29.001 (63), Stats.) to: 1) Remove algae, mussels, dead fish and similar large public nuisance deposits; 2) Remove a single thirty-foot wide path of vegetation to provide access to the water; and 3) Remove and control the invasive plant *Phragmites australis* (Common Reed Grass).

Policy Analysis

The major policy issues regarding this rule are the type, extent, frequency, and methods used to maintain shoreline areas (e.g. beaches) on "outlying waters" (as defined in s. 29.001 (63), Stats.). Lower water levels the past several years on the Great Lakes have provided larger areas of exposed

lakebed ranging in type from rock to sand to vegetation. Since riparian owners have the exclusive privilege to utilize exposed lakebed on their property, they are able to manage these areas in varying ways. Some of these activities include vegetation management and the removal of nuisance materials like *Cladophora* and dead zebra mussels deposited by wave action. Under an emergency rule effective since June 2007, a new general permit was created to streamline the permit process for the removal of *Cladophora* and other nuisance deposits. Since June, three applications have been received under the newly created general permit. Soon after the new general permit was available, there was a large positive public response with many requests for information and permit applications. That initial response, however, only resulted in three permit applications and information requests decreased throughout the summer. The specific reasons for this decline are unknown, however several waterfront property owners commented that there was less *Cladophora* along the shoreline this year. One possible explanation could be that once *Cladophora* detaches from its hard substrate it may be carried for considerable distance by water currents and waves before finally collecting along calmer shores, often in bays and on beaches. As a result, collection of algae on some shores may have more to do with shoreline shape and currents than abundance. The easterly winds are responsible for pushing the algae toward the Wisconsin side of the Lake Michigan coast. Near shore currents along the Wisconsin side of Lake Michigan typically travel from north to south, and these currents pull the algae with them. It may have been that this year there were less easterly winds to blow the *Cladophora* to the Wisconsin shoreline, and/or the near shore currents did disperse the material in the same way as they have done in previous years.

As a result of the positive public response and information requests to the newly created general permit pertaining to nuisance deposits, a new invasive species challenge was uncovered. *Phragmites*, an aquatic invasive plant, has started to grow in dense stands on the exposed lakebed. Currently removal of vegetation on exposed lakebed areas (below the OHWM) is limited to a single 30 foot wide path measured along the shoreline per property. All vegetation (except for any state or federally listed endangered species) may be removed in this 30 foot wide path by hand without any Department approvals (e.g., hand pull it, use a string trimmer, push lawn mower, etc.). However, as the amount of exposed lake bed is increasing, the density of *Phragmites* is increasing and the use of hand held devices is becoming ineffective. Riparian land-owners have expressed the desire to employ the use of motorized vehicles (e.g. ATV, commercial riding mower, etc.) to control *Phragmites*. The statutes and current rule requires lakefront property owners to apply for an individual permit to use motor vehicles to remove nuisance deposits, or other invasive or unwanted vegetation below the OHWM. However, individual permits require a \$500 application fee and a 30 day public comment period before the permit can be issued

Background

From 1965 to 1997, water levels in the Great Lakes were at or above their long-term average. However, from 1998–2000 water levels dropped significantly to around 3 feet below their long-term average. While no longer dropping as sharply as they did from 1998–2000, water levels have continued to stay below their long-term averages. Presently 2006 water levels are below water levels of the year 2005 and the National Oceanic and Atmospheric Administration (NOAA) long-range forecast for 2007 indicates more of the

same. Specifically for the Great Lakes that border Wisconsin, Lake Michigan is 17 inches below its long–term average and Lake Superior is within 2 inches of its all time low.

Low water levels are not the only challenge facing the Great Lakes. Increased populations of invasive species such as Zebra mussels, Quagga mussels, *Phragmites*, and blooms of the nuisance algae *Cladophora*, have continued to plague the Great Lakes. Lower water levels contribute to a greater exposed beach area, and, as a result, mussel shells and large floating mats of algae often get deposited by wave action in large quantities along the lakeshore. The beached algal mats mixed with decaying zebra mussels and other invertebrates and fish result in unsightly, malodorous conditions. Piles of decaying *Cladophora* may affect tourism and recreation and owner property values, have been linked to taste and odor problems in drinking water, and may exacerbate levels of *E. coli* and other bacteria in beach sand and swimming waters, thus raising questions about beach safety. In Wisconsin, these nuisance conditions have been reported at many sites ranging from northeastern Green Bay and the tip of Door County to Kenosha. (UW Sea Grant 2005)

The biomass of *Cladophora* that washes ashore varies between years and locations. Mats of stranded algae two feet thick may collect in some areas– often embayments where waters are calmer and materials tend to collect (Whitman et al. 2003). In 2004, twenty five tons of *Cladophora* were removed from Milwaukee’s lakeshore alone (Stauffer 2004). In other areas, accumulations are less where the decaying algae may remain offshore or confined to the swash zone (Harris 2004).

Lower water levels contributing to greater exposed beach area may also cause other challenges in addition to nuisance deposits. When water levels continue to stay low, the increased use of the exposed beach area and lakebed allows the disturbed area to become more susceptible to invasion by invasive plant species like *Phragmites* (Grime 2001). These invasive stands of *Phragmites* can become so dense that diverse wetland plant communities are eliminated. In addition, nonnative plants do not provide valuable food and shelter for fish and wildlife that native plants provide (Davis et al. 2000; Hulme and Bremer 2006).

Policy Alternative

Waterfront property owners desire to remove unwanted cathodic protection tester periodically inspect all cathodic protection systems for these tanks and piping. Section 12 of 40CFR280 establishes definitions for corrosion expert and cathodic protection tester. Those definitions require corrosion experts to be accredited professionals, and require cathodic protection testers to meet specified criteria for education and experience. The proposed rules are expected to incorporate these requirements and definitions into chapter Comm 5.

As the volume of public nuisance deposits and invasive plants vegetating exposed lakebed increases property owners can’t realistically remove these unwanted deposits or invasive plants by hand. For nuisance deposits, the key to successful clean–up is vigilance in removing the algal mats as soon as they wash ashore. After only a few days in the warm sun, the algae begins to decay into an organic soup which makes it harder to remove. For invasive plants like *Phragmites*, whose plant colonies spread mainly by rhizomes (underground root extensions), the best time to cut and treat is late July, August, and early September when the plant is pulling sugars down into its roots.

The mechanical removal of large algal accumulations has been accomplished with front–end loaders, backhoes or beach grooming equipment. However, monitoring of indicator bacteria in beach sand has shown that heavy equipment may grind decaying algae into moist sand creating conditions that promote higher bacterial growth (Harris 2004). In most cases, the most efficient way to control *Phragmites* and to remove other unwanted vegetation growing on the exposed lakebed is with the aid of motor vehicles such as beach groomers and all terrain vehicles. To allow limited use of motor vehicles for these purposes, precautions must be taken to avoid damaging sensitive beach vegetation and near shore habitat for fish and wildlife. There are currently no state guidelines for *Cladophora* removal or use of motor vehicles for invasive species management. By promulgating three General Permits with standards for mechanized removal that include location standards (where on the shoreline can the activity take place), substrate restrictions (limits on the volume of sand vs. cobble that can be removed incidentally), area standards (how much material can be removed), types of mechanized methods allowed, and guidance on what to do with the removed material, among other things, we will be able to ensure that sensitive beach vegetation and near shore habitat impacts are avoided and that these activities are not inadvertently promoting bacterial growth.

The operation of motor vehicles and the removal or disturbance of materials on the beds of navigable waterways (also know as dredging) is regulated by Wis. Stats. Chapter 30 and Wisconsin Administrative Code Chapter NR 345. The statutes and current rule allows lakefront property owners to apply for an individual permit to use mechanized methods to remove nuisance deposits, or other invasive or unwanted vegetation. However, individual permits require a \$500 application fee and a 30 day public comment period before the permit can be issued.

Considering the changing lakeshore due to decreased water levels and the abundance of invasive species, the Department proposes to revise ch. NR 345 to create three new general permits. The general permits would permit lakefront property owners on the beds of “outlying” navigable waters (as defined in s. 29.001 (63), Stats.) to remove public nuisance deposits (*Cladophora*, Zebra mussels, dead fish, etc.) and invasive vegetation on exposed lakebed more efficiently while complying with general permit conditions created to protect the public interest in the lakebed. The general permit has a \$50 application fee and is processed in 30 days.

Statutory Authority

Sections 30.20, 30.206, and 30.29, Stats.

Entities Affected by the Rule

Affected parties include riparian owners along the shores of “outlying waters” (as defined in s. 29.001 (63), Stats.), aquatic invasive species managers, NRCS and other agencies or contractors who remove invasive and unwanted aquatic plants and dead animals from shoreline areas.

Comparison with Federal Regulations

There are no federal regulations on this particular issue. However, the Army Corp of Engineers (ACOE) regulates dredging in the Great Lakes under the federal general permit (GP–001 WI). The ACOE grants the federal general permit for activities that have received a state permit under section 30.20, Stats.

Estimate of Time Needed to Develop the Rule

Department staff will need approximately 250 hours to complete the permanent rule process.

Agency Contact Person

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 Wisconsin Dept. of Natural Resources
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 MartinP.Griffin@wisconsin.gov
 (608) 266–2997 or fax (608) 266–2244

Transportation**Subject**

The rules affect ch. Trans 131, relating to the vehicle emission inspection program.

Objective of the Rule

The 2007–09 Biennial Budget (2007 Wis. Act 20) makes major programmatic changes to ch. Trans 131, relating to the vehicle emission inspection program, reflecting more cost–efficient emission testing methods available because of advanced technology available on recently–manufactured motor vehicles. Under the new law, all testing will be via second–generation On–Board Diagnostic (OBD II) system scanning. This eliminates the transient and idle tailpipe testing necessary for older vehicles. This proposed rule change conforms the rule to the statute and details how the new program will work, including electronic transmission of testing data to DMV, elimination of repair cost waiver, changes in model years tested, and changes in vehicle types and weights subject to testing. The changes would also eliminate testing of 1968 to 1995 model year vehicles, and add on–board diagnostics equipped diesel vehicles and heavier vehicles to those needing to be tested.

In addition, this proposed rule change eliminates the evaporative emission (“gas cap”) test, which is no longer needed with testing under the OBD II protocol.

Finally, this proposed rule change establishes specific criteria to determine whether a vehicle is “customarily kept in” the non–attainment area and therefore subject to emission testing. This will assist the Department in enforcing the law.

Policy Analysis

Technological changes in vehicle manufacture, and changes in the mix of vehicles in the fleet, necessitate this program change. The Department of Transportation and the Department of Natural Resources have studied a wide variety of options for improving cost–effectiveness and cost–efficiency of the vehicle emission inspection program, while meeting the requirements of the federal US Clean Air Act. DOT and DNR have found that most vehicles in the fleet are now equipped with OBD II technology, that few older vehicles remain which must be tested with transient and idle tailpipe testing methods, that newly–manufactured diesel vehicles are equipped with OBD II technology, and that alternative methods are available for capturing data from On–Board Diagnostic Computers and transmitting it to DOT. The proposed rule making reflects DNR and DOT analysis of these options.

Statutory Authority

Sections 110.20 (8) (bm) and 110.20 (9) (k), as created by 2007 Wis. Act 20.

Entities Affected by the Rule

DOT, DNR, and USEPA are involved in establishing a program that conforms to federal requirements. DOT’s current contractor and other potential vendors are available to perform OBD II testing. Some motor vehicle owners in the non–attainment area will be affected by these changes: older vehicles of 1968 to 1995 model year vehicles would no longer be tested, and on–board diagnostics equipped diesel vehicles and heavier vehicles will be added to those needing to be tested. Contractors involved with highway construction projects can also be affected, as adequate pollution control measures must be maintained in the non–attainment area, in order for construction projects to proceed.

Comparison with Federal Regulations

The vehicle emission inspection program is administered by DOT, in consultation with DNR, to conform with federal Environmental Protection Agency (USEPA) regulations and guidelines, and the US Clean Air Act. All components of the proposed rule–making conform with federal regulations.

Estimate of Time Needed to Develop the Rule

Estimated 400 hours total state employees time to develop the rule.

Submittal of Rules to Legislative Council Clearinghouse

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

Commerce

On October 25, 2007, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rules affect chs. Comm 81 to 87, relating to private onsite wastewater treatment systems.

Agency Procedure for Promulgation

A public hearing is scheduled for November 27, 2007. The Safety and Buildings Division is responsible for promulgation of the rules.

Contact Person

Roman Kaminski
(715) 345–5334
roman.kaminski@wi.gov

Commerce

On October 29, 2007, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rules affect ch. Comm 130, relating to manufacturing investment credit.

Agency Procedure for Promulgation

A public hearing is scheduled for November 28, 2007. The Business Development Division is responsible for promulgation of the rules.

Contact Person

Sam Rockweiler
(608) 266–0797
srockweiler@commerce.state.wi.us

Health and Family Services

On October 17, 2007, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rule affects ch. HFS 83, relating to community–based residential facilities, and affecting small businesses.

Agency Procedure for Promulgation

Public hearings are scheduled for December 7, 12, 17, 18 and 19, 2007.

Contact Person

For substantive questions on rules, contact:
Pat Benesh
Division of Quality Assurance
1 West Wilson St.

Room 1150

Madison, WI 53701

Phone: 608–264–9896

Fax: 608–267–7119

benespa@dhfs.state.wi.us

For small business considerations and rules processing information contact:

Rosie Greer

608–266–1279

greerrj@dhfs.state.wi.us

Insurance

On October 22, 2007, the Commissioner of Insurance submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The changes will affect chs. Ins 6, 26 and 28, relating to licensing of agents for travel insurance.

Agency Procedure for Promulgation

A public hearing is scheduled for November 28, 2007.

Contact Person

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

Public Information and Communications

Office of the Commissioner of Insurance

(608) 264–8110

For additional information, please contact:

Robert Luck

(608) 266–0082 or e–mail at:

robert.luck@wisconsin.gov in the OCI Legal Unit.

Natural Resources

On October 15, 2007, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rules affect chs. NR 320, 323, 328, 329, 341, 343 and 345, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

Agency Procedure for Promulgation

Public hearings are scheduled for November 12 and 16, 2007.

Contact Person

Martin Griffin

Bureau of Watershed Management

(608) 266–2997

Pharmacy Examining Board

On October 22, 2007, the Pharmacy Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects s. Phar 7.015, relating to the transfer of a prescription drug by a pharmacy technician.

Agency Procedure for Promulgation

A public hearing is required and will be held on December 5, 2007 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

Pamela Haack, Paralegal
Office of Legal Counsel
(608) 266–0495
Pamela.haack@drl.state.wi.us

Pharmacy Examining Board

On October 22, 2007, the Pharmacy Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects s. Phar 7.02, relating to prescription labels.

Agency Procedure for Promulgation

A public hearing is required and will be held on

December 5, 2007 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

Pamela Haack, Paralegal
Office of Legal Counsel
(608) 266–0495
Pamela.haack@drl.state.wi.us

Regulation and Licensing

On October 22, 2007, the Department of Regulation and Licensing submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. RL 87, relating to the uniform standards of professional appraisal practice (USPAP) for real estate appraisers.

Agency Procedure for Promulgation

A public hearing is not required. A 30–day Notice of Proposed Rule–Making, as set forth in s. 227.16 (2) (e), Stats., will be filed with the Revisor of Statutes Bureau and will be published in the Wisconsin Administrative Register.

Contact Person

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(608) 266–0495
Pamela.haack@drl.state.wi.us

Rule–Making Notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 07–093]

(Reprinted from 10/31/07 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on proposed amendments to chapter ATCP 74, Wis. Adm. Code, relating to the procedures that DATCP uses to evaluate agents and the amount of reimbursement paid annually to DATCP.

DATCP will hold two public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Friday, November 30, 2007, for additional written comments. Comments may be sent to the Division of Food Safety at the address below, by email to wayne.kopp@datcp.state.wi.us, or online by using the State of Wisconsin’s Administrative Rules website at:

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

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4718 or emailing wayne.kopp@datcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to the State of Wisconsin’s Administrative Rules website at: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

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

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by November 7, 2007, by writing to Wayne Kopp, Division of Food Safety, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4718. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearing Information

Wednesday, November 14, 2007

10:00 a.m. to 12:00 p.m.

Marathon County Government –

Conservation Planning & Zoning Conference Room

210 River Drive

Wausau, WI 54403

Thursday, November 15, 2007

10:00 a.m. to 12:00 p.m.

Dept. of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Room 172

Madison, Wisconsin 53718–6777

Analysis Prepared by the Dept. of Agriculture, Trade and Consumer Protection

This rule modifies current rules related to cities and counties (“local agents”) that license and inspect retail food establishments for the department of agriculture, trade and consumer protection (“DATCP”). This rule increases fees paid by local agents, to compensate DATCP for its costs to train, evaluate and assist local agents. This rule also changes the procedures that DATCP uses to evaluate local agents.

Statutory authority

Sections 93.07 (1), 97.30 (5), 97.41 (2) and (5), Stats.

Statute interpreted

Section 97.41, Stats.

Explanation of agency authority

DATCP has broad general authority under s. 93.07 (1), Stats., to adopt rules needed to interpret and implement laws under its jurisdiction. Under s. 97.41, Stats., DATCP may contract with local agents to license retail food establishments for DATCP. DATCP may set standards for local agents, and may spell out procedures for evaluating local agents. Subject to statutory limits, DATCP may require local agents to pay fees to compensate DATCP for training, evaluation and other services provided to local agents.

Background

DATCP licenses and inspects retail food establishments such as groceries, convenience stores and retail bakeries. DATCP may contract with local agents to license and inspect retail food establishments for DATCP. Local participation is voluntary. A local agent may set its own license fees, which may be higher (and typically are higher) than state fees. A retail food establishment licensed by a local agent does not need to be licensed by DATCP.

The local agent program is growing. DATCP currently contracts with 37 local agents (there were 21 local agents in 2000). DATCP trains, monitors and assists local agent staff, establishes performance standards, and evaluates the consistency and adequacy of local performance.

Local agents must pay an annual fee to compensate DATCP for its costs to train, evaluate and assist local agents. The fee is based on the number of retail food licenses issued by the local agent. The per–license fee is calculated as a percentage of the state retail food license fee, even if the local agent chooses to charge a higher license fee. The statutes authorize DATCP to charge up to 20% of the state license fee. DATCP originally charged a 20% fee, but in 2000 reduced the fee to 10%.

The current 10% fee is not adequate to cover DATCP costs. At the current rate, DATCP recovers only about half of its costs to train, evaluate and assist local agents. The current inadequate fee, combined with growing local participation, has produced a substantial DATCP budget deficit. In FY 2006–07, DATCP collected only \$58,800 in fees from local agents, but incurred local agent costs of \$117,800.

Rule contents

Local Agent Fees. This rule increases fees paid by local agents, to compensate DATCP for services provided to local

agents. This rule increases the fee to 20% (currently 10%) of the state license fee amount. DATCP projects that the higher fee will generate adequate revenue to cover (but not exceed) DATCP's actual and reasonable costs as allowed by statute. Local agents may adjust their license fees to pass on the increased cost, if they wish to do so. Local agents may also opt out of the program at any time.

Local Agent Personnel; Credentials. Under current rules, local retail food inspections must be performed or supervised by public health sanitarians registered by the Wisconsin department of regulation and licensing. Under this rule, inspections may alternatively be performed or supervised by environmental health specialists registered by the national environmental health association.

Evaluation of Local Agents. Under current rules, DATCP must annually evaluate local agent performance. This rule changes the standards that DATCP uses, so that the standards more nearly conform to federal guidelines established by the United States food and drug administration (FDA). Under this rule, an annual evaluation may be based in part on a local agent self–assessment. The self–assessment must be conducted according to procedures spelled out in the agent agreement (procedures are generally based on the FDA guidelines).

At least once every 3 years, DATCP must conduct an on–site evaluation to determine local compliance with applicable laws and rules. Under current rules, the 3–year evaluation must include a survey inspection of randomly selected retail food establishments. Under this rule, a 3–year evaluation may include, but is not required to include, a survey inspection of retail food establishments.

Under this rule, in lieu of performing its own 3–year evaluation, DATCP may accept an equivalent evaluation performed by the Wisconsin department of health and family services (DHFS) pursuant to a cooperative agreement with DATCP (DHFS currently evaluates local agents that license and inspect restaurants for DHFS). An agreement could also provide for reciprocal DATCP evaluation of DHFS local agents, so that the 2 agencies could minimize duplication and maximize evaluation efficiency. There is no cooperative agreement at this time.

Comparison with adjacent states

Michigan. Michigan does not contract with local governments to conduct inspections.

Minnesota. Minnesota contracts with a few local health agencies to conduct retail food inspections. There is no fee to cover state oversight costs (oversight activities are covered by state general purpose revenue appropriations). Minnesota evaluates local agents according to FDA standards.

Illinois. Illinois delegates all retail food licensing and inspection authority to local government. There is no fee to cover state oversight costs (oversight activities are covered by state general purpose revenue appropriations). Illinois evaluates local agents according to FDA standards.

Iowa. Iowa contracts with local government to license and inspect retail food establishments. Iowa does not routinely evaluate local performance, but does occasional audits. There is no fee to cover state oversight costs (oversight activities, such as they are, are covered by state general purpose revenue appropriations). When Iowa does review local performance, it does so according to FDA standards.

Business Impact

This rule increases the fee that *local governments* must pay for services received from DATCP. Local governments may

increase retail food license fees to cover the increased cost, but they are not required to do so. If a local agent passes on the full amount of its increased cost to retail license holders, the added cost allocated to each license holder may range from \$4 to \$56 per year per license holder. The actual amount will depend on the license holder's annual sales and food processing activities. This rule does not impose any additional recordkeeping or other requirements on retail food establishments.

Fiscal Estimate

This rule will increase DATCP revenues to cover (but not exceed) DATCP's actual and reasonable costs to administer the local agent program. Under current rules, DATCP annually collects \$58,800 per year from all of its local agents. Under this rule, revenues will increase by \$58,800 per year so that DATCP will receive approximately \$117,600 per year. That is the approximate amount needed to cover DATCP's current annual cost of \$117,800.

Under this rule, the 37 local agents will incur combined added costs of \$58,800 per year, or an average of just under \$1,600 per local agent. The local agent program is voluntary, so local governments may opt out of the program at any time. Local agents may also recover the increased cost by increasing retail food license fees, but they are not required to do so.

Notice of Hearing Commerce (Plumbing, Chs. Comm 81–87) [CR 07–100]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1), 145.02 (3) and (4), and 145.245 (7) (c), Stats., the Department of Commerce will hold a public hearing on proposed rules under chapters Comm 81 to 87 relating to private onsite wastewater treatment systems.

Hearing Information

The public hearing will be held as follows:

Date and Time:	Location:
November 27, 2007	Conference Room 3B
Tuesday	Thompson Commerce Center
10:00 A.M.	201 W. Washington Avenue
	Madison

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.

Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until December 7, 2007, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Roman Kaminski, at the Department of

Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at roman.kaminski@wi.gov.

Analysis Prepared by Department of Commerce

Statutes interpreted

Sections 101.02 (1), 145.02 (3) and (4), 145.20, and 145.245 (7) (c), Stats.

Statutory authority

Sections 101.02 (1), 145.02 (3) and (4), 145.20, and 145.245 (7) (c), Stats.

Related statute or rule

Sections 59.70 (5), 145.135, 145.19, and 145.24, Stats.

Explanation of agency authority

Under s. 145.02, Stats., the Department of Commerce has the responsibility of safeguarding public health and the waters of the state relative to the construction, installation and maintenance of plumbing. One mechanism of the Department to fulfill this responsibility has been the promulgation of rules under chapters Comm 81 to 87 establishing standards for the design, installation, inspection and maintenance of private onsite wastewater treatment systems, POWTS and for administration of the Private Onsite Wastewater Treatment System Replacement or Rehabilitation Financial Assistance Program.

Section 145.20 (5), Stats., directs the Department to establish a maintenance program for POWTS. This section was established as part of 2005 Wisconsin Act 347.

Section 145.245 (7) (c), Stats., directs the Department to revise grant funding tables when certain thresholds are exceeded.

Summary of proposed rules

The proposed rule revisions are intended to update and clarify the existing rules governing the design, installation, inspection and maintenance for POWTS. The significant revisions proposed include:

Section Comm 2.66 is amended to clarify fees charged for review of revisions of product submittals related to POWTS methods, technologies or site constructed components.

- Chapter Comm 81 is amended to include a definition for “occasional occupancy”. This is relative to maintenance intervals for POWTS.
- Section Comm 82.40 (8) (b) 2., is amended relating to terminology.
- Changes to ch. Comm 83 include numerous minor clarifications and additional administrative requirements and terminology.
- Additional administrative requirements include the implementation of a POWTS inventory and a maintenance reporting program as required by 2005 Wisconsin Act 347. Clarifications include delineation of governmental unit decision making authority and POWTS owner responsibilities.
- Changes to ch. Comm 84 include minor clarifications.
- Changes to ch. Comm 85 clarify language relating to processing of site and soil evaluation information.
- Changes to ch. Comm 87 revise the grant funding tables as required by s. 145.245 (7) (c), Stats.

Comparison with federal regulations

There are two existing federal regulations that address some of the activities that are regulated by this rule (Chapter Comm 83).

40 CFR 144.80(e) addresses Class V Wells also known as Shallow Injection Wells. Specifically, 40 CFR 144.3, defines “Sanitary Waste” as including domestic wastewater. Chapter Comm 83 addresses treatment and dispersal of domestic wastewater. Also, 40 CFR 144.3, defines “Wells or Injection Wells” as including certain septic systems. Class V regulations specifically address “Large Capacity Septic Systems” which are defined as systems receiving sanitary wastes from multiple dwellings or from non-residential establishments where the system has a capacity to serve 20 or more person per day. These systems are “authorized by rule” provided they meet two minimum federal requirements. 1. The owner or operator submits basic inventory information. 2. The injectate (wastewater) cannot endanger underground sources of drinking water. Chapter Comm 83, Wis. Adm. Code, addresses Private Onsite Wastewater Treatment Systems (POWTS) which include septic systems that serve all structures residential and non-residential regardless of capacity. Owner information is required as part of the permitting process. Section 145.13, Wis. Stats., requires that chapter Comm 83, Wis. Adm. Code, comply with the provisions of chapter 160, Wis. Stats. Chapter NR 140, Wis. Adm. Code, contains a list of substances that have preventative action limits and enforcement standards. This list is more specific than the current federal regulations. Chapter Comm 83, Wis. Adm. Code, incorporates the applicable provisions of chapter 160, Wis. Stats., and chapter NR 140, Wis. Adm. Code.

40 CFR Part 122 addresses National Pollutant Discharge Elimination System (NPDES) permits. Chapter Comm 83, Wis. Adm. Code, addresses large POWTS systems which are covered by Wisconsin Pollutant Discharge Elimination System (WPDES) permits that are issued by the Department of Natural Resources. The WPDES permit process is modeled after the NPDES permit process.

There are no proposed federal regulations that would address activities that are regulated by this rule making project.

Comparison with adjacent states

An internet search of the [State of Illinois](http://www.state.il.gov) website revealed that the Illinois Private Sewage Code was last revised in 2003. Illinois Environmental Protection Agency regulates surface discharge (greater than 1,500 gpd) and “experimental” systems. Illinois Department of Public Health regulates surface discharging systems (less than 1,500 gpd) and all other systems that discharge below ground surface. The rule does not include requirements for maintenance reporting programs.

An internet search of the [State of Iowa](http://www.state.ia.gov) website revealed that the Iowa Onsite Wastewater Treatment and Disposal Code was last revised in 2003. In Iowa local boards of health have primary responsibility for onsite systems. The Iowa Department of Natural Resources has responsibility for systems that serve more than 15 people. The rule does not include requirements for maintenance reporting programs.

An internet search of the [State of Michigan](http://www.state.mi.gov) website revealed that Michigan does not have a statewide onsite sewage system code. Michigan Department of Environmental Quality under the authority of Part 22 Groundwater Quality Rules established the 1994 version of “The Michigan Criteria for Subsurface Sewage Disposal. These criteria are used by the Michigan Department of Environmental Quality and by 44 local health departments that develop their own rules to regulate single and two family systems. The Michigan Criteria do not include requirements for maintenance reporting programs.

An internet search of the State of Minnesota website revealed that Minnesota Rules Chapter 7080, Individual Sewage Treatment Systems (ISTS) was last revised in 1999. Counties/Local Governments issue permits for systems with less than 10,000 gpd flows. Minnesota Pollution Control Agency issues permits for systems with greater than 10,000 gpd flows. Local rules may include a maintenance reporting requirement.

Summary of factual data and analytical methodologies

The primary methodology for updating the POWTS rules, primarily chapters Comm 81 and 87, has been a review and assessment of the current rules by an advisory council. The members of the council represent many stakeholders involved in the POWTS industry, including designers, contractors, regulators, academics and manufacturers. (A listing of the council members is provided at the end of this analysis.)

The Department utilizes advisory councils to gather information on potential impacts in complying with the both the technical and administrative requirements of the codes. A responsibility of council members is to bring forth concerns their respective organizations may have with the requirements, including concerns regarding economic impacts. (Copies of the council meetings summaries are on file in the Safety and Building Division.)

Analysis and supporting documents used to determine effect on small business

The Department believes that the proposed rules would have a minimal additional impact on small business in light of the following:

The current chapter Comm 83 contains inspection, maintenance, servicing and reporting requirements for POWTS. Contractors involved in providing inspection, maintenance, servicing and reporting services will not have additional requirements to meet based on the proposed code revisions. The department does not believe that the proposed rules will increase the effect on small businesses over that imposed by the 2005 Wisconsin Act 347.

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

Council Members and Representation

The proposed rules were developed with the assistance of the following Advisory Council:

POWTS Advisory Code Council

James Converse, Madison, UW Madison – Dept. of Biological Systems Engineering

Steven Crosby, Waunakee, Wisconsin Builders Association

Dale Dimond, Wausau, Marathon County Zoning

Patrick Essie, Madison, Wisconsin Precast Concrete Association

Thomas Gilbert, Madison, Wisconsin Department of Natural Resources

Don Murphy, Eagle, Wisconsin Liquid Waste Carrier Association

Michael O'Connell, Mount Horeb, Wisconsin Association of Plumbing, Heating, and Cooling Contractors

Chris Olson, Door County Sanitarian Office

Sue Schambureck, Reedsville, Wisconsin Onsite Wastewater Recycling Association

Todd Stair, Delafield, Wisconsin Onsite Wastewater Recycling Association

E. Jerry Tyler, Madison, UW Madison – Dept. of Soil Science

Copy of Rules

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

Environmental Analysis

NOTICE IS HEREBY GIVEN that the Department has prepared a preliminary Environmental Assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Roman Kaminski
Division of Safety and Buildings
Department of Commerce
P.O. Box 2689
Madison, Wisconsin 53701
Telephone (715) 345–5334

Written comments will be accepted until December 7, 2007.

Initial Regulatory Flexibility Analysis

Types of small businesses that will be affected by the rules

The proposed rule revision will affect soil testers, designers, installers and maintainers of POWTS. The revisions implement portions of 2005 Wisconsin Act 347 regarding POWTS maintenance and are also intended to update and clarify existing rules that were last revised in 2004.

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

The proposed rule revision does not establish new requirements for soil testers, designers, installers and maintainers of POWTS.

Types of professional skills necessary for compliance with the rules

The proposed rule revision will not establish the need for additional or new skills for soil testers, designers, installers or maintainers of POWTS.

Will the rules have a significant economic impact on small businesses?

No.

Small business regulatory coordinator

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@wi.gov.

Fiscal Estimate

2005 Wisconsin Act 347 directs the department to implement a maintenance reporting program for private onsite wastewater treatment systems, POWTS. This program includes activities undertaken by governmental units (counties) to insure compliance with POWTS maintenance requirements.

Many counties have existing POWTS maintenance reporting programs in place. There is a broad range of technical ability and sophistication of these programs. The

programs range from a paper based reporting system to a fully integrated electronic reporting system. The number of POWTS entered into databases range from 0 to all known POWTS within the jurisdictional area. Four counties currently do not participate in the Wisconsin Fund program and therefore do not have some form of maintenance reporting which is a requirement for participation.

Costs for implementation of a POWTS maintenance reporting program will vary depending on the level of program currently in place and are therefore indeterminable. Governmental units are able to implement fees, by ordinance, to support the implementation or expansion of a POWTS maintenance reporting program.

Governmental units have other existing sources of POWTS revenue such as Sanitary Permits. It is unknown whether governmental units may pass direct costs associated with a maintenance reporting program to owners.

A proposed change will shift the required plan review for holding tanks to be performed at the local level by all governmental units. Many governmental units currently perform this review. The department anticipates that there will be a loss of \$60,000 in annual revenue as a result of the shift.

It is not anticipated that there will be additional costs for others to comply with these rule revisions. The current chapter Comm 83 contains inspection, maintenance, servicing and reporting requirements for POWTS. Contractors involved in providing inspection, maintenance, servicing and reporting services will not have additional requirements to meet based on the proposed code revisions. The department does not believe that the proposed rules will increase the effect on small businesses over that imposed by 2005 Wisconsin Act 347.

Long–range fiscal implications

None anticipated due to department operations. For governmental units, ongoing costs associated with operation of a reporting program database and compliance follow–up will occur.

Notice of Hearing

Commerce

(Financial Resources for Businesses and Communities, Chs. Comm 104–131)

[CR 07–101]

NOTICE IS HEREBY GIVEN that pursuant to s. 560.28 (2), Stats., the Department of Commerce will hold a public hearing on proposed rules in chapter Comm 130, Wis. Adm. Code, relating to certifying businesses as being eligible to claim tax credits for fuel and electricity used in manufacturing, under ss. 71.07 (3t), 71.28 (3t), and 71.47 (3t), Stats., and affecting small business.

Hearing Information

The public hearing will be held as follows:

Date and Time:	Location:
November 28, 2007	Thompson Commerce Center
Wednesday	Third Floor, Room 3B
9:30 A.M.	201 West Washington Avenue
	Madison, Wisconsin

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make

communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 or (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.

Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until December 5, 2007, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. All written comments should be submitted by e–mail to srockweiler@commerce.state.wi.us. If e–mail submittal is not possible, written comments may be mailed to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

Analysis Prepared by the Department of Commerce

Statutes interpreted

Sections 71.07 (3t), 71.28 (3t), 71.47 (3t), and 560.28, Stats.

Statutory authority

Sections 227.11 (2) (a) and 560.28 (2), Stats.

Explanation of agency authority

Section 560.28 (2), Stats., requires the Department to promulgate rules for certifying businesses as eligible to claim tax credits for fuel and electricity used in manufacturing, under ss. 71.07 (3t), 71.28 (3t), and 71.47 (3t), Stats.

Related statute or rule

The Department has rules for several other programs associated with tax credits, but none of those programs relate to certifying businesses as being eligible to claim these tax credits.

Plain language analysis

The proposed rules specify (1) the eligibility requirements for businesses to become certified, (2) the documentation that must be submitted to receive certification, (3) the Department’s response to the submitted documentation, and (4) use of the Department’s response when filing claims with the Department of Revenue for the corresponding tax credits.

Comparison with federal regulations

Neither the Department nor the Department of Revenue is aware of any existing or proposed federal regulations that address these tax credits.

Comparison with adjacent states

Neither the Department nor the Department of Revenue is aware of any rules in adjacent states that address these tax credits.

Summary of factual data and analytical methodologies

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the criteria in 2003 Wisconsin Act 99; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax–credit verification; and (3) soliciting

and utilizing input from the Department of Revenue, and from representatives of the stakeholders who are expected to participate in this program.

Analysis and supporting documents used to determine effect on small business

The primary document that was used to determine the effect of the proposed rules on small business was 2003 Wisconsin Act 99. This Act requires the Department to promulgate rules for certifying businesses as eligible to claim tax credits for fuel and electricity used in manufacturing, under sections 71.07 (3t), 71.28 (3t), and 71.47 (3t) of the Statutes.

Effect on small business

The proposed rules are not expected to impose significant costs or other impacts on small businesses because the rules address submittal of documentation only by businesses that choose to pursue these tax credits.

Agency Contact Person

Amy Cumblad, Wisconsin Department of Commerce, Bureau of Business Development, P.O. Box 7970, Madison, WI, 53707–7970; telephone (608) 266–2688; e–mail Amy.Cumblad@wi.gov.

Copy of Rules

The proposed rules and an analysis of the rules are available on the Internet, by entering “Comm 130” in the search engine at the following website: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Amy Cumblad at the Department of Commerce, Bureau of Business Development, P.O. Box 7970, Madison, WI, 53707–7970; or at telephone (608) 266–2688 or (608) 264–8777 (TTY); or at Amy.Cumblad@wi.gov. Copies will also be available at the public hearing.

Environmental Analysis

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

Initial Regulatory Flexibility Analysis

Types of small businesses that will be affected by the rules

Any business which chooses to apply for the tax credits under sections 71.07 (3t), 71.28 (3t), and 71.47 (3t) of the Statutes – and which meets at least one of the following conditions:

(1) The business has retained 100 percent of its full–time jobs in Wisconsin from December 23, 2003, through either December 31, 2006, or December 31, 2007.

(2) The business’s average annual investment in Wisconsin from January 1, 2003, through either December 31, 2006, or December 31, 2007, is equal to no less than 2 percent of the total book value of the business’s depreciable assets in facilities that are based in Wisconsin.

(3) The business’s average annual investment in Wisconsin from January 1, 2003, through either December 31, 2006, or December 31, 2007, is no less than \$5,000,000.

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

Applicants for becoming certified as being eligible for the tax credits must submit an application that demonstrates compliance with at least one of the above conditions.

Types of professional skills necessary for compliance with the rules

No new professional skills would be needed for compliance with these rules.

Will the rules have a significant economic impact on small businesses?

No.

Small business regulatory coordinator

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267–0297, or by e–mail at cdunn@commerce.state.wi.us.

Fiscal Estimate

Although the proposed rules would newly result in review and approval of documentation relating to certifying businesses as eligible to claim tax credits for fuel and electricity used in manufacturing, the number of these reviews and approvals is expected to be too small to result in significant changes in the Department’s costs for administering its business development programs. 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 only voluntary submittal of documentation relating to tax credits for fuel and electricity used in manufacturing.

Notice of Hearings

Health and Family Services

(Community Services, Chs. HFS 30—)

[CR 07–095]

NOTICE IS HEREBY GIVEN that pursuant to ss. 50.02 (1) and (2) (a), 50.025, and 227.11 (2) (a), Stats., and interpreting ss. 50.03, 50.035, and 50.037, Stats., the Wisconsin Department of Health and Family Services proposes to repeal and recreate ch. HFS 83, relating to community–based residential facilities, and affecting small businesses.

Hearing Information

Date and Time	Location
December 7, 2007 8:30 AM – 12:30 PM	Northeastern Regional Office 200 North Jefferson Street Room 152A Green Bay, Wisconsin
December 12, 2007 11:30 AM – 3:30 PM	State Revenue Building 2135 Rimrock Road First Floor Events Room Madison, Wisconsin
December 17, 2007 8:30 AM – 12:30 PM	Northern Regional Office 2187 North Stevens Street Suite C Rhineland, Wisconsin

December 18, 2007
12:00 PM – 4:00 PM
Western Regional Office
610 Gibson Street
Room 123
Eau Claire, Wisconsin

December 19, 2007
9:00 AM – 1:00 PM
Southeastern Regional Office
819 North 6th Street
Room 40
Milwaukee, Wisconsin

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication at a hearing difficult; you require an interpreter or a non–English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Submission of Comments

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>. The deadline for submitting comments to the Department is 4:30 p.m. on December 26, 2007.

Analysis Prepared by the Department of Health and Family Services

This proposed order repeals and re–creates ch. HFS 83 relating to CBRFs. CBRFs are facilities for 5 or more adults who require supervision and care and services above room and board. Nursing care is not the primary function of the facility. In Wisconsin, CBRFs are one of 4 categories of regulated entities referred to as assisted living facilities.

The purpose of the proposed rule is to accomplish the following:

- Focus on resident outcomes and quality of life and quality of care.
- Support reasonable and flexible regulatory processes.
- Improve readability and organization, and eliminate excess and prescriptive verbiage.
- Incorporate information from Division of Quality Assurance memos.
- Update HFS 83 with related regulations, including requirements regarding Family Care, Wisconsin Commercial Building Code, chs. HFS 12 and 13, and ch. 50, Stats.
- Address increasing acuity care levels of consumers residing in CBRFs.
- Revise staff training standards, establishing a more cost effective system for providers and the Department.
- Clarify medication administration requirements.
- Incorporate requirements for facilities with more than 20 residents into the main body of the rule.
- Promote utilization of nationally recognized standards of practice.

The proposed order recognizes national and state trends in the assisted living industry, and incorporates recommendations from the 2003 Assisted Living Workgroup Report to the U.S. Senate Special Committee on Aging. The Department’s goal is to integrate these concepts into HFS 83 for the benefit of the consumers of Wisconsin. For example:

- Staff training in the provision of personal care will enhance the ability of staff to meet the increasing care needs of consumers in assisted living facilities.
- Additional requirements for assessment and care planning in the areas of mental health, wandering, falls, pain management, and choking will augment existing care planning requirements.
- Clarification of nurse delegation responsibilities to a non–licensed caregiver will address acuity and will allow facilities to provide appropriate care in a cost effective manner in times of limited nurse availability.
- A new requirement that a temporary service plan be developed and implemented on admission will help ensure that facilities will be prepared to meet the immediate needs of the consumers.
- Increased administrator qualifications and annual staff training standards are reflective of national trends.
- Increased requirements for disclosure to consumers and families regarding services, including nurse availability to help consumers choose a CBRF that best meets their needs.
- Development of a Department approved training curriculum in medication administration enhances the consumer choice to live in a community residential setting while decreasing risks associated with the administration of medication.
- Additional Department approved training curriculum incorporates current standards in fire safety, first aid/choking, and standard precautions to protect the health, safety and welfare of consumers in CBRFs.
- The new requirement for a sprinkler system in small facilities serving persons who are not physically or mentally capable of responding to an electronic fire alarm and exiting the facility without help, or physical or verbal prompting, will ensure the safety of vulnerable adults living in CBRFs.

Chapter HFS 83 was last substantially revised July 1, 1996.

Initial Regulatory Flexibility Analysis

The proposed rule will affect CBRFs that are licensed to care for 5 or more unrelated adults. Based on data from the APIS database, as of January 2006, there were 1373 licensed CBRFs in Wisconsin. The majority of these entities are “small businesses” as the term is defined under s. 227.114 (1) (a), Stats.

The North American Industry Classification System (NAICS) includes CBRFs in the Health Care and Social Assistance sector, (sector 62) and further defined in sub–sector 623 Nursing and Residential Care Facilities. CBRFs represent approximately 60% of the NAICS establishments, 30% of the \$2.7 billion in annual receipts, and 33% of the 72,000 employees in the sub–sector. Industries in sub–sector 623 provide residential care combined with either nursing, supervisory, or other types of care as required by residents. The facilities are a significant part of the production process; and care provided is a mix of health and social services with the health services being largely some level of nursing service.

Data obtained from the APIS database on January 18, 2006 records 1,373 CBRFs as licensed to operate in Wisconsin; CBRFs have averaged 1,356 facilities since 2001. Approximately one dozen facilities open, close, or, change ownership each month. CBRF entities include non–profits including churches, corporations for profits, partnerships, limited liability corporations, sole proprietorships, and governmental entities.

CBRFs are categorized based on residents’ ability to respond to an emergency. Class ‘A’ CBRFs may serve residents who are ambulatory, semi–ambulatory, or non–ambulatory if the residents are mentally and physically capable of responding to an electronic fire alarm and exiting the facility without any help or verbal or physical prompting. Currently 1/3 of all CBRFs hold Class ‘A’ licenses.

Class ‘C’ CBRFs may serve residents who are ambulatory, semi–ambulatory, or non–ambulatory but one or more of whom are not mentally or physically capable of responding to

an electronic fire alarm and exiting the facility without help or verbal or physical prompting.

CBRFs are also categorized by size. CBRFs that have bed capacity for 5 to 8 residents are licensed as small CBRFs. CBRFs that have bed capacity for 9 to 20 residents are licensed as medium CBRFs. CBRFs that have bed capacity for 21 or more residents are licensed as large CBRFs. Class ‘C’ CBRFs currently make up 85% of the licensed bed capacity, up from 15% in 1983.

Types of CBRF Entities	Class ‘A’			Total Class ‘A’	Class ‘C’			Total Class ‘C’	Total CBRFs
	Small	Medium	Large		Small	Medium	Large		
Non–Profit	76	65	12	153	66	38	34	138	291
Corporation for Profit	162	44	6	212	162	165	73	400	612
Partnership/LLC	34	12	1	47	105	163	66	334	381
Sole Proprietorship	23	12	0	35	17	12	1	30	65
Governmental	7	3	1	11	9	2	2	13	24
Total	302	136	20	458	359	380	176	915	1373

The 1,373 CBRFs are licensed for a total of 22,035 beds, an average of 16 beds per facility.

Most of the revenue CBRFs receive is for resident care. The low and high rate charged per resident is gathered on the license application and subsequent renewals and is

maintained in the APIS database. Residents are charged different rates based on the levels of care provided. The January 18, 2006 data for all CBRFs was averaged by class and size to estimate revenue for a ‘typical’ CBRF. Average revenue decreases as facility sizes increase.

Average Annual Revenue per Licensed Bed, APIS Data	Class ‘A’				Class ‘C’			
	Small	Medium	Large	All Sizes	Small	Medium	Large	All Sizes
Average Low Rate Revenue	37,788	32,313	32,139	35,908	42,361	30,110	29,436	34,787
Average Median Rate Revenue	40,070	36,533	35,483	38,763	46,104	30,070	29,425	40,206
Average High Rate Revenue	42,185	40,753	38,827	41,612	49,846	42,885	42,935	45,626

Expenditure data for Wisconsin CBRFs is not readily available; to determine average operating expenses per licensed bed, data from *The State of Seniors Housing 2005* report is compiled below. This study defines assisted living beds as “properties designed for frail seniors who need assistance with activities of daily living, but do not require skilled nursing care.” Beds identified for persons with Alzheimer’s are defined as “designated for those residents with significant cognitive impairment as a result of having Alzheimer’s or a related dementia.” These categories most closely match the Wisconsin definition of a CBRF. The national sample contained 117 assisted living residences, including Alzheimer’s units. The sample represents 10,078 assisted living beds, resulting in an average of 86 beds per facility. The sample covers all 50 states and consists of 87% for–profit businesses. The data presented below is an average annual per bed cost from all 117 entities included in the

sample. The data is presented in income statement format for ease of presentation and does not reflect any actual operating results for any given entity. The averaging process generally inflates the individual line item expense. The larger 86 bed average facility will include higher administrative costs than the typical 16 bed CBRF in Wisconsin.

Assisted living facilities are more profitable than the demonstration income statement below implies. *The State of Seniors Housing 2005* report includes operating margins ranging from 19.3% – 33.8%; these ratios reflect results of Earnings Before Interest, Taxes, Depreciation, Amortization, and Rent (EBITDAR). The revenues in the table below, \$35,712 and \$40,348 are within the revenue ranges in the APIS dataset, providing validation to Wisconsin CBRFs. All expenses are also displayed as a percentage of revenue.

National Median Annual Operating Revenue and Expenses per Occupied Assisted Living Bed	Senior Assisted Living Facilities		Senior Assisted Living Facilities including Alzheimer's residents	
Revenue	35,712	100.00%	40,348	100.00%
Direct Labor				
Administrative	1,601	4.48%	1,576	3.91%
Dietary	1,593	4.46%	1,550	3.84%
Housekeeping Maintenance	501	1.40%	597	1.48%
Maintenance	397	1.11%	371	0.92%
Assisted living	6,285	17.60%	6,039	14.97%
Nursing	1,207	3.38%	2,548	6.32%
Marketing	577	1.62%	768	1.90%
Other Labor	676	1.89%	420	1.04%
Payroll Taxes	1,158	3.24%	1,281	3.17%
Employee Benefits	931	2.61%	1,684	4.17%
Total Labor	14,926	41.80%	16,834	41.72%
Non–Labor Expenses				
Property Taxes	1,067	2.99%	966	2.39%
Liability Insurance	901	2.52%	753	1.87%
Raw Food	1,541	4.32%	1,744	4.32%
Utilities	1,308	3.66%	1,319	3.27%
Marketing/Advertising	763	2.14%	500	1.24%
Repairs & Maintenance	620	1.74%	795	1.97%
Housekeeping	174	0.49%	227	0.56%
Management Fees	1,661	4.65%	2,262	5.61%
Debt Service/Lease Payments	7,446	20.85%	9,364	23.21%
Misc. Operating Expenses	2,022	5.66%	2,267	5.62%
Corporate/Administrative Expenses	2,914	8.16%	327	0.81%
Total Non–Labor Expenses	20,417	57.17%	20,524	50.87%
Total Expenses	35,343	98.97%	37,358	92.59%
Net Operating Income	369	1.03%	2,990	7.41%

Labor costs are 42% of revenue for both sample income statements, with higher receipts covering the higher cost of care at the Alzheimer's facilities. Non-labor or fixed cost expenses are slightly higher for facilities offering lower care levels, due mostly to lower receipts. The data in the table above was used to determine whether any increased costs associated with the proposed rules have a significant impact on small business in Wisconsin.

Pursuant to the Department's criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index or reduces revenues by more than the prior year's consumer price index. For the purposes of this rulemaking, 2005 is the index year. The CPI rate for 2005 is 3.4%.

It is anticipated that all CBRFs will experience modest increased costs from one or more of the additional requirements defined above. A number of CBRFs already meet or exceed the requirements set forth in the proposed rule and will not be affected by the rule changes. It is estimated that many of the cost increases would be less than 1% of revenue on a single bed; distributing the cost across all

licensed beds further reduces the impact of increased costs to the CBRF

Approximately 117 of the small Class 'C' CBRFs may be required to install a sprinkler system. The cost to install a sprinkler system at these facilities will likely exceed 3.4% of operating expenses. Should these facilities need to make changes to meet other regulated areas such emergency lighting, increased cost for training, solid doors, higher costs for an administrator, etc., this will most likely exceed the established Department cost criteria of 3.4%. Only 8.5% of all CBRFs appear to be affected by the need for sprinkler systems, the single most costly item in the proposed rule. The affected facilities have other options available to them to address the cost of sprinklers; including downsizing to a 4 bed adult family home, or requesting a waiver from the Department.

The proposed rule may increase costs for CBRFs modestly in several areas, however, changes in administrative reporting requirements may reduce this administrative burden. Based on available data, the increased costs for most CBRFs will be less than the 2005 CPI of 3.4%. The effect on small business CBRFs cannot be clearly defined as there are too many variables. Small CBRFs will experience a larger fiscal impact

then larger facilities as the per bed impact for any single item is greater.

Based on the January 2006 data, it is estimated that 892 CBRFs (65% of all CBRFs) are small business with annual revenue less than \$5 million or 25 or fewer employees. To determine small business status, the Department used CBRF published low monthly rates and a conservative FTE calculation. The logic used may have overstated the estimate of small business CBRFs.

Revenue for each CBRF was estimated using data from the APIS database. Each CBRF monthly low rate was multiplied by licensed beds, then by twelve months, and then 85%; the industry occupancy rate. Five CBRFs exceed annual receipts of \$5 million using this formula. Using the CBRF monthly high rate resulted in eight entities exceeding \$5 million in annual receipts. Several corporations operate multiple CBRFs; revenue estimates for these corporations were tallied together.

NAICS employee data in sub–sector 623 Nursing and Residential Care Facilities (71,877 employees) was distributed by licensed beds for all BQA licensed entities in this sub–sector, including CBRFs. This calculation results in an average of 0.878 staff per licensed bed. Staff levels were projected using the average staff calculation and multiplying by licensed capacity. The results showed 130 CBRFs with 26 or more employees. Once again, corporate owned CBRFs were tallied together.

Capital Expenditures

Sprinkler system for small class ‘C’ facilities.

Small class ‘C’ CBRFs serve 5 to 8 persons with physical or cognitive impairments which prevent them from responding to an alarm and escaping a fire without assistance. Many of these facilities are older, private homes with aging mechanical and electrical systems that have been converted to CBRFs, increasing the need for fire protection. An analysis of federal data and public news accounts shows at least 2 fires a day in the nation’s assisted living facilities. These fires result in generally one fatal fire a month, twice the rate of nursing homes. Wisconsin CBRFs are required to report all fires that occur on the premises. In 2005, 10 fires were reported. While there were no deaths, one resident was injured.

In August, 2005, the South Milwaukee Common Council passed the Fire Prevention, Protection and Control Code. This Code was drafted by the South Milwaukee Fire Department and 6 surrounding communities because of the potential increase in loss of life from fire that could occur in residences converted to house a group of elderly or disabled persons. The Code requires the retrofit of fire sprinkler protection in all adult family homes and CBRFs regardless of class or occupancy load. Facilities must begin installation within one year from the date of notification. Other local governments may follow South Milwaukee’s lead in this requirement.

Alabama is one of the few states that require all assisted living facilities to be sprinklered, and has not had a fatal fire in an assisted living facility in a decade. The National Fire Protection Association (NFPA) has documented and analyzed 28 fatal board and care facility fires during the past 20 years. This report, published in the NFPA Journal January/February 1993, stated that an approved automatic sprinkler system would have controlled or extinguished the fire and may have altered the outcome at a board and care home in Detroit in which 10 residents died. The Journal also reported that the

average property loss per fire in a sprinklered building is \$2,130 versus \$5,845 in a non–sprinklered building.

See related articles regarding fire safety in the nation’s assisted living facilities.

http://www.usatoday.com/news/nation/2005-12-15-fire-safety_x.htm

<http://www.iafc.org/associations/4685/files/healthcare.pdf>

<http://archive.gao.gov/d15t6/138117.pdf>

<http://www.gao.gov/new.items/d04660.pdf>

Installing a sprinkler system may be a financial hardship for some small class ‘C’ CBRFs but there are alternatives available. Facilities may choose to change the classification of their licensure to serve persons who are physically and mentally capable of taking life–sustaining action. A CBRF could reduce capacity and become a four–bed adult family home, not subject to ch. HFS 83. However, both options would most likely result in some decreased revenue, either from fewer residents or providing services to residents with fewer health needs at a lower rate. A CBRF can request a waiver from the Department. The Department may grant a waiver of the requirement if the facility submits alternate provisions to meet the rule that would not jeopardize the health, safety, and welfare of its residents. CBRFs have 5 years to comply with the sprinkler requirement allowing substantial time to budget for the associated costs.

The cost to install a sprinkler system in a small class ‘C’ facility is estimated between \$13,000 and \$23,000 or between \$1,625 (\$13,000 for 8 beds) and \$4,600 (\$23,000 for 5 beds) per licensed bed. Based on a Department study, 117 small Class ‘C’ facilities, or 8.5% of all CBRFs will need to install sprinkler systems. Small Class ‘C’ CBRFs have 5 years to comply. As a capital purchase spread over 5 years, \$920 annually (\$4,600/5 years) per bed is 2.6% of the average Wisconsin CBRF gross annual revenue of \$34,787 per licensed bed. As a single item, this cost is estimated to be less than the 2005 CPI of 3.4 %.

Hand drying.

The proposed rule requires that common use bathrooms be provided with individual towel dispensers, enclosed cloth towel dispensing units or electric hand dryers to help prevent the spread of infection. The risk of developing a communicable disease is 2 to 4 times greater in a communal living arrangement. This requirement does not apply to private resident bathrooms. The number of common use bathrooms in a facility is generally limited. Facilities will have 3 months after the effective date of the proposed rule to comply with this requirement. CBRFs may request a variance from the Department.

The cost of a cloth towel dispensing unit is approximately \$64. An individual paper towel dispenser costs between \$40 and \$60. Costs for laundry or paper supplies may cost \$150 per year. This requirement doubles the annual per bed housekeeping cost of \$174 and \$227 from the table of revenues and expenses in the previous section and is 1/2 of 1% of revenue for one bed.

Fire inspection for small facilities.

Currently ch. HFS 83 requires all facilities serving 9 or more residents to arrange for an annual fire inspection. The proposed rule requires small facilities to meet this same requirement as facilities serving 9 or more residents. The overwhelming majority of municipalities conduct this inspection for small facilities at no cost to the provider. Nineteen counties throughout the state, including Milwaukee, Dane, Sheboygan and Jefferson do not provide this service.

Small facilities in these counties will need to arrange for an annual inspection, possibly at a cost to the provider. At this time the review is completed by the Department. However, the Department no longer has the resources to complete this task.

The cost for fire inspection of some CBRF's will range from \$60 to \$150 annually, an insignificant per bed cost (\$12 – \$30 per bed in a five bed facility). See the following website <http://dhfs.wisconsin.gov/forms/DDES/DDE0795.pdf> for a copy of the Fire Inspection Report form.

Fees for plan review for new construction, additions, remodeling, and smoke and heat detector, and sprinkler system installation

The purpose of the plan review is to determine compliance with the structural requirements contained in proposed rule, and the Department of Commerce building code requirements; related accessibility requirements; prior to new construction; additions; remodeling and installation of smoke and heat detectors; and sprinkler systems. This review focuses on fire safety including, minimum type of construction; number of exits; egress routes; placement of fire extinguishers; smoke and heat detectors; and sprinkler heads. The proposed rule does not require plans to be prepared by a certified architect. The plan review is conducted by highly trained Department engineers and ensures the building meets applicable requirements prior to construction. This service is provided by the Department for a nominal fee. The existing fee is based on the estimated cost of the construction project and is listed in the table below:

Current Plan Review Fees for CBRFs

Cost of Project	Plan Review Fee
\$1 – \$5,000	\$100
\$5,001 – \$25,000	\$300
\$25,001 – \$100,000	\$500
\$100,001 – \$500,000	\$750
\$500,001 – \$1,000,000	\$1,500
\$1,000,001 – \$5,000,000	\$2,500
\$5,000,000 or more	\$5,000

Most CBRF plan reviews are for projects under \$500. Department time study data reveals that the cost for engineers to review these projects is much greater than the current \$100 fee. The proposed rule would increase the plan review fee to \$300 for projects with an estimated dollar amount of at least \$2,000 but less than \$25,000. The fee for projects less than \$2,000 will remain at \$100. All other fees will remain the same. Department databases indicate an average of 150 small CBRF plan reviews are conducted by the Department annually. Eleven percent of CBRFs may have to pay the increased fee. This increase is less than ¼ of 1% of the revenue for a single average bed. During calendar year 2005, approximately 150 CBRF plans were submitted for review including 75 plans for fire and sprinkler systems. Another 30 plans were for new facility construction or major remodeling projects. Providers have the ability to budget accordingly when planning for capital expenditures.

Stand–by power source.

The proposed rules require emergency back up lighting in limited areas, including stairways and exit passageways to ensure safe evacuation of residents in case of a fire, power outages, or natural disaster. Many residents in CBRFs are elderly and have limited ambulation ability, vision deficits or

hearing impairments, making it important that exit routes are clearly illuminated at all times. Staffing levels are lower on the night shifts so their efforts need to focus on resident evacuation rather than finding a source of light. The back up lighting may be battery operated. The average cost of a battery operated unit is \$30. Facilities may require 2 or more back–up lighting units depending on the layout of the facility.

Facilities will have 3 months after the effective date of the proposed rule to comply with this requirement. Any facility may request a variance from the Department to this requirement.

Increased cost for stand–by power sources may have a one–time cost of approximately \$100, ¼ of 1 % of the revenue for a single CBRF bed. The number of affected CBRFs is unknown.

Solid core wood door.

Existing rules require facilities to have a door between the basement and first floor for smoke separation purposes. The proposed rule will require these doors to be solid core wood or the equivalent and are designed to contain fire and limit the spread of smoke to allow additional time to evacuate vulnerable persons from a facility. Basements are high risk areas for the development of fire due to location of such items as furnaces, clothes dryers, electrical panels, and highly combustible materials. It is necessary to provide safety measures between the basement and first floor to minimize the effects of a fire. Persons living in assisted living facilities are dependent on state regulations to make sure facilities meet appropriate safety standards.

Facilities will have 3 months after the effective date of the proposed rule to comply with this requirement. Any facility may request a variance from the Department to this requirement.

The one time cost for solid core doors or equivalent fire protection is estimated at an expense of \$400 per basement entrance. This improvement is estimated at 1% of revenue on one bed one time. The number of CBRFs affected is unknown.

Ongoing Operational

Initial license and renewal fees.

Facilities are required to pay start up and renewal fees to the Division of Quality Assurance. Facilities are required to pay a base fee of \$306 plus \$39.60 per licensed bed capacity for a 2 year license. This fee is prorated for facilities receiving an initial, probationary license. This fee is established under ch. 50, Stats. and is not a requirement under the proposed rule.

Background checks.

CBRFs may not employ persons convicted of a crime related to the care of a vulnerable adult. Community–based residential facilities are required under s. 50.065, Stats., to conduct caregiver background checks of all employees upon hire and every 4 years thereafter. Wisconsin statutes set the search fee of \$2 for non–profit organizations, \$5 for governmental agencies and \$13 for any other requestor. The frequency of caregiver background checks and the associated fees will depend upon both the size of the facility and staff turnover.

Increased administrator qualifications.

The proposed rule requires the administrator of the facility to have an associate degree or higher in a business or health care related field, or at least 60 credit hours of post–secondary course work in business, healthcare, nursing, social services, management or other fields related to human services. The existing rule requires administrators be at least 21 years of

age, have completed high school or equivalent, have administrative experience or one post–high school course in business management, and have one year experience working with the client group of the facility. Current administrators will not be subject to the new administrator qualifications. Only administrators hired after the rule is enacted will be subject to the new educational requirements. This requirement was developed to improve leadership skills and accountability in the provision of services to residents whose acuity levels are rising.

Using data from the Department of Workforce Development and the Wisconsin Technical School System, it is estimated that the increased administrator qualifications could increase beginning salary by \$5,000 annually. Fringe benefits would increase from \$400–\$2,000 annually depending upon the benefits available from any specific CBRF entity. Market salary conditions, unemployment rates, and regional variances already affect administrator salary and will continue to do so with the increased qualifications. It is anticipated that sole proprietors who continue to administer their own business would be unaffected as only administrators hired after the rule was enacted will be subject to the new educational requirements. Any facility may request a variance from the Department to this requirement.

Higher administrator qualifications could potentially increase the beginning salary by \$5,000 annually, with fringe benefit costs to \$7,000 depending up the benefit package. Increased per bed costs are estimated at \$438 (\$7,000 for 16 beds). These per bed costs could be \$1,400 at a 5 bed CBRF. Additional administrative cost may raise labor to 43% of revenue on the sample income statement, an increase of just over 1%.

Staff training including 15 hours annual continuing education.

Over the past several years, the acuity level of resident living in CBRFs has increased steadily. Many residents have complex medical and, or behavioral needs that require a trained, skilled response. CBRFs often care for residents who, in the past, would have lived in a nursing home and have care needs that require staff assistance with eating, toileting, dressing, supervision, and ambulation. Many residents also have significant medical conditions, such as diabetes, heart and respiratory illnesses, and wound care that requires medical intervention and frequent monitoring by properly trained staff. A strong training program is essential to ensure that staff has the required skills to meet the needs of the residents.

While the overwhelming majority of CBRFs provide good care, the Department has taken enforcement action and fined facilities that do not provide adequate care. For calendar year 2005, the Department assessed \$439,406 in forfeitures against CBRFs. The 10 most frequently cited rules that resulted in fines included lack of staff training in the areas of fire safety, the spread of communicable diseases, and the prevention of choking for residents. Forfeitures were also assessed against CBRFs that did not provide prompt and adequate treatment to residents, proper resident supervision, and resident rights. Please refer to the charts enclosed to see the increase in fines assessed over the past 5 years and the requirements most often cited.

Training requirements have been revised to increase staff training standards, while also establishing a more cost effective system for providers. In addition, training requirements have been revised to address the increasing acuity care levels of consumers residing in CBRFs and

enhance the ability of staff to meet the increasing care needs of consumers living in assisted living facilities. Currently staff are required to complete 45 hours of Department approved training. The average cost per person for each of the required training areas is \$384. The attached chart shows a breakout for each training requirement.

Program	Hours Required	Avg. Cost Per Person*
Fire Safety	6	\$28.24
Standard Precautions	3	\$35.40
Medication	8	\$63.50
Dietary	3	\$35.00
First Aid	4	\$37.00
Resident Rights	Minimum Total hours for Block I is 32 hours	\$48.00
Challenging Behaviors		\$42.00
Client Specific Training		\$53.00
Needs Assessment		\$42.00

* Cost is based on qualification of the staff receiving training. For example, all staff must be trained in Fire Safety. Only staff that provides medication administration assistance to residents would be required to be trained in medication.

Providers also have another option for meeting the current training requirements. Providers may pay a one–time fee to a number of private entities that have created a Department approved training program. Providers then may use this program to train all staff in their facility on an on–going basis. The cost of a video–based training program is approximately \$3,675.

The training requirements established in the proposed rule allows more flexibility than the existing rule. The proposed rule removes the prescribed number of 45 training hours in specified topic areas and allows providers to “provide, obtain or otherwise ensure adequate staff training” in the areas of Resident Rights, Resident Group Specific Training, Responding to Challenging Behaviors, Assessment of Residents, Individual Service Plan Development, Provision of Personal Care, and Dietary. This change allows providers flexibility in meeting the training requirements in these topic areas. Providers now may use in–house staff knowledgeable in a topic area to train other staff without having to seek Department approval for the trainer and the curriculum. Providers who do not have in–house resources may seek out trainers in the private sector to provide this training to staff. This should result in savings to the provider because the private sector trainers do not need to be approved by the Department and train to Department approved curriculum. The overall changes made to the training requirements will create a savings for providers by eliminating the requirement for Department approved trainers and curriculum in these topic areas.

The proposed rule requires Department approved training curriculum in the areas of Fire Safety, First Aid, Medications and Standard Precautions. All trainers will need to use the Department’s curriculum. Utilizing the Department’s standard curriculum will create savings for providers.

Providers will no longer need to expend resources to create their own training programs for separate, departmental approval. Trainers for these topic areas will need to be certified by a Department approved entity using standards established by the Department. Trainers seeking certification from this entity will pay a cost determined by the entity. Trainers must renew their certification every 2 years.

The proposed rule increases continuing education hours to be completed by staff from 12 to 15 hours per year. Staff training is currently estimated at \$114.00 annually (12 x 9.50). If an hourly wage of \$9.50 was calculated for staff time spent in training, this would cost providers an additional \$28.50 (9.50 x 3) per staff, per year. Continuing education training requirements help ensure staff receive information in current standards and practices related to areas such as Standard Precautions, Resident Group Specific, Medication, Resident Rights Prevention and Reporting of Abuse, Neglect and Misappropriation, and Fire Safety and Emergency Procedures.

The proposed changes to ch. HFS 83 generally reduce the administrative tasks associated with training staff. Actual training time may increase, but savings in administering the program will redirect limited resources to where these will do the most good for residents. Increased flexibility in obtaining training will allow CBRFs to meet the specific needs of their residents and obtain savings from being allowed to use training resources currently not available to them. Purchasing training from sources outside of the CBRF will provide savings often available in an open market. Many CBRFs already exceed the minimum Department training requirements and will be unaffected by these changes. Specific costs for any single facility are not readily determined, but should not materially increase operating expenses.

Communicable disease screening.

In the existing rule, CBRFs are required to ensure that all employees are screened for the presence of clinically apparent communicable diseases, including tuberculosis, within 90 days before the start of employment. This standard is similar to employee health screening requirements for nursing homes, home health agencies, hospices, hospitals, facilities for the developmentally disabled and restaurants. *The Journal of American Medical Association* (April 19, 2000) identifies people who live in community living settings and people who work as health care workers as two groups of people at risk for acquiring tuberculosis. Pulmonary tuberculosis is a contagious disease that is usually spread through the coughing and sneezing of an infected person. Transmission of the infection usually occurs only after prolonged exposure. It is important for persons in high risk groups to be tested to ensure they are free from infectious disease to prevent exposure and spread of the disease to residents and to identify the need for treatment.

The average cost for a pre–employment screening and tuberculosis skin testing is \$50.00. This amount was obtained from current providers and area clinics. It is estimated that the average CBRF (16 beds) will pay \$250 annually for these health screenings. It is estimated that the average CBRF has 14 employees. Assuming a 35 % annual turnover rate, it is estimated that five new screenings will need to be conducted annually. Screenings will cost 7/10 of 1% of the revenue for one bed; the expense is un–measurable when distributed across the sixteen beds. This is a minor cost to assure the health, safety and welfare of Wisconsin’s CBRF residents.

Ongoing Transactional

Annual resident assessment, Individual service planning, Annual on–site medication review, Annual resident evacuation assessment.

As required in the existing rule, all facilities must assess each resident prior to admission in order to determine if the facility is able to meet the needs of the residents. Areas of assessment include: physical health, medications, presence of pain, nursing procedures required, mental and emotional health, behaviors that may be harmful, risks such as choking, falling or wandering. In addition to the assessment, facilities must develop an individual service plan for each resident based on the individual needs identified from the assessment. The plan also specifies the different types of interventions staff will use to meet the resident’s needs, and identify the provision or arrangement for those services necessary. The assessment and the development of the individual service plan generally take 4 to 8 hours depending upon the acuity of the resident.

The assessment and individual service plan are required to be updated when a resident undergoes a significant change or at least annually to identify the needs and abilities in the areas listed above. This update of the assessment and individual service plan generally takes 2 to 3 hours. Existing CBRF staff, or county human services staff, should be able to complete the required assessments with no increased cost to the facility. CBRFs lacking the staff to complete the required assessments may need to use the services of a consultant; these costs could range from \$20 – \$100 per hour. At the time the annual assessment is completed, the facility must offer all residents the opportunity to complete a satisfaction evaluation which identifies the resident’s level of satisfaction with the facility’s services. See the following website for a copy of Resident Satisfaction Form:

<http://dhfs.wisconsin.gov/forms/DDES/DDE2372.pdf>.

At least annually, a physician, registered nurse, or pharmacist is required to conduct an on–site review of the facility’s medication administration and storage system. The on–site review will generally assess medication storage including, locked areas, separation of internal and external medications, refrigerated medications, labeling, and security of narcotics. The medication administration portion of the on–site review will assess staff administration of medications to residents to ensure proper route, proper dosage, proper resident, proper time and proper administration method. The last component of the assessment includes a review of the facility’s medication administration records. This review ensures proper documentation of medications administered, including proof of use audits for all narcotics, documentation of medication errors or resident refusals to take medications and documentation showing staff understanding of potential side effects and benefits of psychotropic medication use. This on–site visit generally takes between 2 to 3 hours depending on the size of the facility and acuity of residents served. A registered nurse on staff would be qualified to perform the on–site medication administration. CBRFs lacking staff to complete this review may need to use the services of a consultant; these costs could range from \$20 – \$100 per hour; or \$60 – \$300 annually.

Part of the on–going transactional costs for facilities includes an evaluation of each resident’s ability to evacuate the facility in case of fire or disaster without any help or verbal or physical prompting from staff. The assessment is standardized by the Department and must be completed by a staff person knowledgeable of the resident’s abilities. This

evaluation must be completed annually and when there is a significant change in a resident's condition. This assessment generally takes one hour for a newly admitted resident and subsequent evaluations are generally completed in 30 minutes. Existing CBRF staff, or county human services staff, should be able to complete the required evacuation evaluation with no increased cost to the facility. See the following website for a copy of the Resident Evacuation Assessment form:

<http://dhfs.wisconsin.gov/forms/DDES/DDE2373.pdf>.

Costs for annual assessments, service plans, on–site visits and evacuation evaluations may cost from \$20 – \$100 per hour if performed by consultants. These costs are ¼ of 1% of the revenue for single average bed. There is no increased cost for CBRFs that perform these required assessments with existing staff.

Mandatory reporting requirements.

All CBRF mandatory reporting requirements are listed in s. HFS 83.12 of the proposed rule. Many of these reports are required by Wisconsin statute or other administrative code. Section 50.04 (2t), Stats. requires facilities to report all deaths related to the use of a physical restraint, psychotropic medication or suicide to the Department within 24 hours of the death. Chapter HFS 13 requires CBRFs to report all allegations of abuse or neglect of a resident, suspicious injury of unknown source or misappropriation of a resident's property to the Department within 7 days of the occurrence. CBRFs are also required to notify the Department anytime a resident is missing or is seriously injured requiring hospitalization if there has been a fire on the premises, or when law enforcement personnel are called to the facility as a result of an incident that jeopardized the health safety or welfare of a resident. None of these reports are new requirements for CBRFs.

Start Up Compliance Costs.

A person requesting licensure of a CBRF must complete an initial license application as required by s. 50.03, Stats. In addition to identifying general and facility information, the proposed rule requires a perspective licensee to complete financial information. This financial information includes the completion of a balance sheet which identifies assets; both current and fixed, and liabilities and net worth. Many corporate entities will not experience additional costs developing a balance sheet to meet Department reporting requirements as standard reports in accounting systems; balance sheets are readily available to any CBRF using automated accounting systems. For those CBRF entities that do not follow generally accepted accounting principles (GAAP), the aid of an accounting service may be required. Based on industry experience it will take one to 5 hours for an accountant to develop a balance sheet from the available records provided by the CBRF entity. Accountants currently charge \$100 – \$200 an hour for such services. This potential cost to CBRFs is a one–time startup expense.

The proposed rule requires new CBRFs to submit financial information showing assets, liabilities and net worth at the time of initial licensure as one way to determine whether the entity is qualified and has adequate resources to care for dependent adults. In the past, facilities have ceased operations abruptly due to financial problems with little or no notice to residents and families. This has caused physical and mental distress and resulted in residents being forced into accepting a new placement without adequate time to visit a

variety of potentially new facilities to determine which best meets their needs and satisfaction. The information on the balance sheet will enable the Department to evaluate the financial viability of an entity.

See the following website for a copy of the Application for Community–based Resident Facility:

<http://dhfs.wisconsin.gov/forms/DDES/DDE0287.pdf>

Small Business Regulatory Coordinator

Rosie Greer

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Fiscal Estimate

There is no fiscal effect on state or local revenues or liabilities.

Copies of Rules and Fiscal Estimate

A copy of the full text of the rules and the fiscal estimate can be obtained at no charge from the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> or by contacting the person listed below.

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Notice of Hearings

Health and Family Services

(Community Services, Chs. HFS 30—)

[CR 07–102]

NOTICE IS HEREBY GIVEN that pursuant to s. 48.67, Stats., and interpreting s. 48.67, Stats., the Wisconsin Department of Health and Family Services proposes to revise chs. HFS 45, 46 and 55, relating to child care and affecting small businesses.

Hearing Information

Date and Time

Location

December 3, 2007

4:00 – 7:00 PM

Milwaukee County Zoofari

Conference Center

9715 W. Bluemound Road

Milwaukee

December 10, 2007

4:00 – 7:00 PM

Northcentral Technical College

Room E101–E102 Main Building

1000 W. Campus Drive

Wausau

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication at a hearing difficult; you require an interpreter or a non–English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Submission of Written comments

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>. The deadline for submitting comments to the Department is 4:30 p.m. on Monday, December 17, 2007.

Analysis Prepared by the Department of Health and Family Services

The Department is required under s. 48.67, Stats., to establish, by rule, minimum requirements and standards for the operation of day care centers. These requirements and standards are codified under chs. HFS 45, 46, and 55. 2005 Wisconsin Act 165 revised s. 48.67, Stats., to require licensees who are individuals, employees, and volunteers who provide care to children under 5 years old to receive training under s. 253.14 (4), Stats., relating to shaken baby syndrome and impacted babies before the individual is issued a license or before employment or volunteer work begins. The Department intends to modify these rules to conform to the new requirements under s. 48.67.

In addition, the Department intends to modify chs. 45, 46, and 55 to conform with s. 948.53, Stats., (created by 2005 Wisconsin Act 184) which prohibits a person from leaving a child being transported in a vehicle that is owned or leased by a child care provider or used to transport children to and from a child care provider. The Department specifically intends to incorporate requirements for procedures to ensure that children are tracked during transport and that parents are notified if a child does not arrive at a day care center as scheduled. Further changes intended for chs. HFS 45, 46, and 55 are to ensure that the rules conform with the requirements under s. 347.48 (4) (as), Stats., for restraining children under 8 years old in motor vehicles used to transport children in care.

The Department also intends to generally update and clarify chs. HFS 45, 46, and 55 as follows:

Chapter HFS 45. Family Child Care Centers

The Department proposes to modify ch. HFS 45, to do the following:

- Revise the definition of a family child care center to mean a facility where the licensee resides. The intent of this change is to require family child care centers to be located in the licensee's residence.
- Prohibit family child care licensees from operating more than one family child care center at a time.
- Clarify when buildings used for family child care must meet commercial building codes.
- Create guidelines on when notification to a parent is required.
- Require additional licensee reporting to the Department and clarify existing reporting to the Department.
- Revise training requirements for providers to do the following:
 - Require primary providers to have specified entry-level training before working with children. Other providers would have up to 6 months to get training.
 - Require all providers to be trained in the business side of operating a child care center.
 - Require staff at centers licensed to care for children under 5 years old to have training in Shaken Baby Syndrome and appropriate ways to guide children's

behavior. 2005 Wisconsin Act 165 revised s. 48.67, Stats., to require licensees who are individuals, employees, and volunteers who provide care to children under 5 years old to receive training under s. 253.14 (4), Stats., relating to shaken baby syndrome and impacted babies before the individual is issued a license or before employment or volunteer work begins.

- Revise the provider to child ratios to allow providers to care for additional school-age children (age 5 and enrolled in school) rather than children who are age 7 and above.
- Require family child care centers that use on-premise play space to have a permanent boundary to protect children in care from any nearby hazards. Fencing and landscaping are two types of boundaries allowed by the proposed rules.
- Clarify requirements for child care business liability insurance if pets are accessible to children.
- Clarify rules related to pets and animals on the premises of a center.
- Require licensees to obtain driver records for persons who transport children for the center.
- Revise rules relating to car safety seat and booster seat usage to conform with s. 347.48 (4) (as), Stats.
- Require child care centers to have and implement procedures to ensure that no child is unattended in a vehicle.

Chapter HFS 46 Group Child Care Centers

The Department proposes to modify ch. HFS 46, Group Child Care Centers rules to do the following:

- Require licensees to create personnel policies pursuant to s. HFS 12.07 which require staff to notify the licensee of convictions, investigations, governmental findings of abuse and neglect, or restrictions on certain credentials.
- Require centers have and implement a policy on transporting children in order to ensure that children are safely transported while under the care of the center.
- Require additional reporting requirements and clarify existing reporting requirements to the Department.
- Require additional training for center directors. Center directors are allowed additional time to meet the additional training requirements.
- Require training in Shaken Baby Syndrome if the child care center is licensed to care for children under age 5.
- Clarify requirements for center personnel who have sole charge of children.
- Clarify requirements for persons who provide care to children during the center's opening and closing 2 hours.
- Require staff substitutes be at least 18 years old.
- Clarify rules relating to the use of a dishwashing machine to clean soiled dishes.
- Prohibit trampolines and bounce surfaces as play equipment.
- Allow the use of shredded rubber and poured surfacing on play grounds.
- Require all group child care centers that use on-premise play space to have a permanent boundary to protect children in care from any nearby hazards.
- Revise rules requiring car safety seat and booster seat usage to conform with s. 347.48 (4) (as), Stats.
- Require centers to have and implement procedures to ensure that no child is unattended in a vehicle.

- Clarify requirements for entry level staff training requirements for staff who care for school–age children.
- Limit the maximum group size of school age children to 32 children with 2 adults.
- Allow school–age children to move between groups if the child care center has a procedure to track the children during movement.

Chapter HFS 55 Day Camps

The Department proposes to modify ch. HFS 55, Day Camps rules to do the following:

- Prohibit children under age 3 years from being accepted enrollment in a day camp.
- Create rules related to enforcement actions, revocations, appeal language, general conditions for approval of a license.
- Clarify rules related to pets and animals on the premises of a center.
- Create rules related to car seat, booster seat and seat belt usage to conform with s. 347.48 (4) (as), Stats.
- Require driver records be obtained annually.
- Require licensees to have and implement procedures to ensure that no child is unattended in a vehicle.
- Expand the requirements for what must be included in camp policies and procedures.
- Add requirements for posting a license, any approved exceptions to a rule and enforcement actions.
- Require conformity with ch. HFS 12 and s. 48.685, Stats., relating to caregiver background checks.
- Add additional items that must be reported to the department including:
 - Any death of a child in care or any accident or incident that occurs while a child is in the care of a camp that requires professional medical treatment.
 - Any known convictions, pending charges or other offenses of the licensee, an employee or other person subject to a caregiver background check which could potentially relate to the care of children or the activities of a camp.
 - Any suspected abuse or neglect of a child by a staff member or any inappropriate discipline of a child in the care of the camp.
 - Any incident involving law enforcement that involves a licensee, household member or an employee of a camp in an incident that causes or threatens to cause physical or serious emotional harm to an individual including a child in the care of a camp.
 - Any changes in room usage at a camp.
 - Any incident related to a child who leaves the premises of a camp without the knowledge of a provider or any incident which results in a counselor not knowing the whereabouts of a child in attendance at a camp.
 - Any construction or remodeling that has the potential to affect an areas accessible to children or a condition of the license.
- Add rules related to recording a child’s attendance and parental notification for certain circumstances.
- Clarify camp director and camp counselor responsibilities.
- Increase the annual pre–camp training time for staff from 18 hours to 24 hours .

- Revise the pre–camp training components to include Shaken Baby Syndrome prevention training and CPR.
- Require that a camp identify a base camp with a building or shelter available for use by the camp to be used during inclement weather.
- Require a working telephone on the premises.
- Add rules relating to safe food storage and preparation.
- Clarify requirements for safe drinking water.
- Require camps’ program of activities be focused on out–door activities.
- Clarify what must be included in camp programs.
- Clarify rules on guiding children’s behavior including a requirement that specifies that time outs, if utilized by the camp, must have a procedure included in the camp behavior guidance policy.
- Revise requirements for play equipment used by children.
- Revise requirements related to meal planning and special diets for children.
- Clarify requirements related to health supervisors, illness and communicable diseases and medication administration.
- Add requirements that define procedures to be used by caregivers who diaper children.
- Require that each child have a health history and emergency care plan on file at the camp with a procedure for sharing this information with counselors.
- Revise requirements when pools and beaches are on the premises. Including the following:
 - Requirements for waterfront supervisors.
 - Clarify requirements related to boats, waterfront activities and other swimming related items.
- Require adventure–based activities.

Initial Regulatory Flexibility Analysis (Effect on Small Business)

The proposed changes to chs. HFS 45, 46 and 55 will affect child care centers and day camps licensed to care for 4 or more children under age 7 for less than 24–hours per day. As of January 2007, there are 3,120 family child care centers licensed to care for between 4 and 8 children; 2,486 group child care centers licensed to care for 9 or more children and 78 day camps licensed to provide a seasonal program for 4 or more children. Most of these entities are “small businesses” as the term is defined under s. 227.114 (1) (a), Stats.

Chapter HFS 45 – Family Child Care Centers

Changes to ch. HFS 45, would require that all family child care centers using on–premise play space have a permanent boundary protecting the children from any nearby hazards. Typically these boundaries are fences. The department estimates that approximately 80% of currently licensed family child care providers (2,500 of 3,124 licensees) already have outdoor play space enclosed by a fence or other permanent boundary. Another 1 to 2 % of facilities have permission to use off premises play space that is not required to be enclosed. The remaining 500 to 600 facilities currently utilize on–premises play space that is not enclosed. The current rules allow landscaping as a means to enclose outdoor play space as an alternative to putting up a fence. Depending on the type of material chosen, the department estimates the cost to purchase and install a fence start at \$300 and could go higher depending upon the type of enclosure selected by the licensee. This would be a one–time expense. Some centers may qualify for an exception to the rule requiring enclosures

on outdoor play space due to other protections that could be put in place to adequately protect the children who are playing outside. These exceptions would be considered on a case by case basis.

The proposed rule would require a Registry certificate to document completion of entry level training requirements for all providers. The licensing rules would require a Registry certificate to be in place within 6 months of becoming licensed or starting to work at a family child care center. A Registry certificate indicates the level of education in early childhood attained by the person. Cost of a Registry certificate if applied for on–line is \$27. Standard mail–in applications cost \$42. Although Registry certificates can be updated annually for an additional cost, the proposed rule requires only a one–time certificate to be on file.

The proposed rules will add a small additional one–time only cost of \$27 – \$42 for family child care providers who will need to have a Registry certificate for each person providing care. The proposed change does not require that a Registry certificate be renewed annually. An additional 1 time only cost for a fence or other boundary will affect approximately 500 – 600 licensed family child care centers who do not currently have a fence. The department estimates this cost to begin at \$300 and go upward depending on the type of fencing or boundary chosen by the licensee. The training required for shaken baby syndrome prevention is included in the courses required for entry–level training, so no additional costs are anticipated. For those new providers or licensees who have already met the training requirements, but have not yet had training in shaken baby syndrome prevention, a stand–alone training is available at a cost per person of \$10 – \$15. This is a one time only cost. The Department does not anticipate any costs associated with the proposed rules that would require a licensee to reside in the family child care center or limit a family child care center license to one per licensee. These changes would only apply to licenses issued after the effective date of the rules and not affect any programs currently holding a license.

Family Child Care Center estimated annual income: \$31,000 – 62,000 . Estimated annual income for family child care centers was calculated by assuming an average weekly rate of \$150 per child for 52 weeks. The range was determined by looking at the maximum number of children in care over a year, using the income if 4 children attended and 8 children attending.

Reporting requirements for family child care centers have not increased appreciably with the proposed changes.

Chapter HFS 46 – Group Child Care Centers

Proposed rules for ch. HFS 46 would require directors in a group child care center to obtain additional credit–based education. Currently, there are 2,491 licensed group child care centers that would be affected by this rule change. The proposed changes would require the director of a small child care center licensed to care for 50 or fewer children (currently there are 1,538 small group child care centers licensed in Wisconsin) to obtain one course in the Wisconsin Child Care Administrator Credential from a technical college or university within 1 year after the effective date of the rule. Center directors in large group child care centers licensed to care for 51 or more children (953 currently licensed centers) would be required to complete the 18 – credit Wisconsin Child Care Administrator Credential within 3 years after the effective date of the rule. The Wisconsin Technical College System estimates that the cost of obtaining this credential is \$2000 per credential including books and other materials. The T.E.A.C.H. Early Childhood© – Wisconsin scholarship

program administered through the Wisconsin Early Childhood Association under contract with the Department of Workforce Development, is available to students enrolled in the Wisconsin Child Care Administrator Credential. The T.E.A.C.H. Early Childhood© – Wisconsin scholarship covers 70% of tuition, 75% of books, a travel stipend, up to 15 hours of release time per semester and 75% of the credential fee. The center agrees to provide 20% of tuition, \$300 bonus when a contract is completed and up to an additional 15 hours of release time. The scholarship recipient provides 10% of tuition, 25% of the cost of books and 25% of the credential fee. In addition, the scholarship recipient agrees to remain in his/her current position at the center for a year. The T.E.A.C.H. Early Childhood© – Wisconsin scholarship is open to any person currently working at least 25 hours per week in a licensed or certified child care center.

The proposed changes to ch. HFS 46, Licensing Rules for Group Child Care Centers would require that center directors obtain additional credit–based training. At most, the Department estimates the cost of the training would be \$2000 for the center directors of 953 large group child care centers. Small center directors (1538 programs) would need to complete only 1 course in the Wisconsin Child Care Administrator Credential. Expected cost for one course including books is \$350. The T.E.A.C.H. Early Childhood© – Wisconsin scholarship is available for center director’s affected by this new requirement. The scholarship covers 70% of tuition and 75% of books. Centers are expected to cover 20% of tuition and 25% of books leaving 10% of tuition to be covered by the center director. The training required for shaken baby syndrome prevention is included in the courses required for entry–level training, so no additional costs are anticipated. For those new employees who have already met the training requirements, but have not yet had training in shaken baby syndrome prevention, a stand–alone training is available at a cost per person of \$10 – \$15. This is a one time only cost.

The proposed rules require that all group child care centers using on–premise play space have a permanent boundary protecting the children from any nearby hazards. Typically these boundaries are fences. An additional 1 time only cost for a fence or other boundary will affect less than 2% of the licensed group child care centers. The majority of the group child care centers already have the requisite fencing or other boundary. School–age only programs are not required to have a fence or boundaries. The department estimates this cost to begin at \$300 and go upward depending on the type of fencing or boundary chosen by the licensee.

Group Child Care Center estimated annual income: \$520,000 – 1,560,000

Estimated annual income for group child care centers was calculated by assuming an average weekly rate of \$200 per child for 52 weeks. The range was determined by estimating an average of 50 children in attendance vs. 150 children in attendance. According to a statistical report from the BRL database, there are 1,090 group child care centers with a capacity of between 21 and 50 children and 195 group child care centers with a capacity between 101 and 150 children. (There are 74 group child care centers with a capacity of 151+ children and 448 group child care centers with a capacity of fewer than 21 children)

Reporting requirements for group child care centers have not increased appreciably with the proposed changes.

Chapter HFS 55 – Day Camps

Proposed changes to ch. HFS 55, would require training in child and adult Cardiopulmonary Resuscitation (CPR) for all

camp counselors, waterfront supervisors and camp directors. CPR training is readily available from a variety of sources at various prices. The rule requires a current certificate of completion. Some certificates are valid for a 2–year period while others are valid for 1 year. The department estimates that 50% of existing camps (38 of 76 camps) already require CPR training for employees. For the remaining 38 camps the cost of providing CPR training might range from approximately \$15 – \$30 per student depending on who provided the training. These costs could be annual or biennial depending on the type of course chosen.

The proposed changes to ch. HFS 55, Licensing Rules for Day Camps will require additional hours of pre–camp training which would include training CPR and shaken baby syndrome. The proposed rules will raise the number of pre–camp training hours from 18 to 24. The Department estimates that approximately 38 of the currently licensed 76 camps already require CPR for counselors. The cost of CPR training is estimated to be \$15 – \$30 per student.

Day camp estimated annual income is \$110,000. Day camp estimated annual income was calculated by assuming a \$200 weekly rate for 11 weeks with 50 children in attendance.

Increases in reporting requirements for day camps have increased substantially. However the department believes that the additional reporting requirements are necessary to ensure that the health, safety and welfare of children is protected. In most cases, the reports can be made by phone with a follow–up written report that can be submitted electronically. There should be minimal increases to staff time to accommodate the increased reporting requirements.

Small Business Regulatory Coordinator

Rosie Greer

Greerrj@dhfs.state.wi.us

608–266–1279

Fiscal Estimate

There is not expected to be a fiscal impact on state or local revenues or liabilities.

Copies of Rules and Fiscal Estimate

A copy of the full text of the rules and the fiscal estimate can be obtained at no charge from the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> or by contacting the person listed below.

Contact Person

Anne Carmody, Child Care Program Specialist

1 W. Wilson St., Room 534

P.O. Box 8916

Madison, WI 53718–8916

608–266–9314

plicBRLco@dhfs.state.wi.us

Notice of Hearing

Insurance

[CR 07–096]

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of a proposed rule affecting chapters Ins 6, 26, and 28, Wis. Adm. Code, relating to licensing for travel insurance.

Hearing Information

Date: November 28, 2007

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

Place: OCI, Room 227
125 South Webster St. – 2nd Floor
Madison, WI

Submission of Written Comments

Written comments can be mailed to:

Robert Luck

Legal Unit – OCI Rule Comment for Rule Ins 6

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707–7873

Written comments can be hand delivered to:

Robert Luck

Legal Unit – OCI Rule Comment for Rule Ins 6

Office of the Commissioner of Insurance

125 South Webster St – 2nd Floor

Madison WI 53703–3474

Email address:

robert.luck@oci.state.wi.us

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

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

Copy of Rule and Contact Person

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

Phone: (608) 264–8110

Email: Inger.Williams@wisconsin.gov

Address: 125 South Webster St. – 2nd Floor
Madison WI 53702

Mail: PO Box 7873, Madison WI 53707–7873

Analysis Prepared by the Office of the Commissioner Of Insurance (OCI)

Statute interpreted

Section 628.04 (3), Stats.

Statutory authority

Sections 601.41 (3) and 628.04 (3), Stats.

Explanation of agency authority

The proposed rule is promulgated under the commissioner’s authority to prescribe classifications of intermediaries by kind of authority, or kind of insurance, or in other ways and authority to prescribe different standards of competence, including examinations and educational prerequisites for each class.

Related statutes or rules

None

Plain language analysis

A new limited line license is created for travel insurance. Wisconsin currently has four limited lines of insurance authority: credit, title, legal expense and miscellaneous limited lines insurance. Each limited line has requirements set by the commissioner for testing, precensing education and continuing education.

In order to simplify multi–state licensing of insurance producers, Wisconsin and other states, through the National Association of Insurance Commissioners (“NAIC”) have committed to make licensing standards more uniform. The NAIC has adopted Uniform Resident Licensing Standards. Included in these standards is a definition for limited line travel insurance. This rule creates a new limited line for travel insurance, adopting the uniform definition approved by the NAIC.

The rule exempts persons holding a travel insurance license from preclicensing education, examination and continuing education requirements. These exemptions are consistent with the NAIC uniform standards.

In addition, the rule revises 2 sections to clearly state the current requirements regarding preclicensing education for Managing General Agents and when preclicensing must be taken.

Comparison with federal regulations

There are no federal regulations which address licensing of travel insurance agents.

Comparison with adjacent states

According to the NAIC, 44 states accept license applications for the limited line of travel insurance.

An independent fifty state review of insurance laws and regulations found that a majority of states have some form of limited line travel license available for resident producers. A number of these states do not provide express authority to issue limited lines travel insurance licenses; however, there are other references to these licenses in the statutes or regulations.

The only states in which express or implied authority to issue limited line travel licenses were not found are as follows: Alabama, District of Columbia, Nebraska, Rhode Island and Wisconsin. The following states do not provide express authority for these licenses but reference the licenses in statutes or regulations which may imply availability: Arkansas, Connecticut (although there is no statutory authority, a bulletin issued by the Connecticut Department of Insurance states that a Travel Limited Line license is available), Iowa (only express authority is for vehicle rental companies), Kansas, Michigan, Montana, North Dakota, Pennsylvania, Texas (offers a specialty license) and West Virginia.

Illinois – Illinois offers limited lines licenses for travel insurance under 215 ILCS 5/500–100.

Iowa – Iowa provides an exception to licensing for travel agents under s. 522B.3(i).

Michigan – Michigan provides a limited Property & Casualty license that covers a variety of products including travel accident and baggage. An exam is required. Chapter 12 Michigan Insurance Code.

Minnesota – An insurance producer may receive qualification for a license in the limited line of “travel baggage insurance.” Minn. Ins. Code § 60K.38(1)(c)(4).

Summary of factual data and analytical methodologies

A majority of states have adopted a limited line travel insurance license. The definition used in this rule is consistent with the recommended uniform definition. Without a limited line license in Wisconsin, Wisconsin residents who sell travel insurance in other states cannot obtain nonresident licenses in the other states. Therefore, these individuals are subjected to an additional regulatory burden in order to obtain these

licenses in other states. Adoption of this rule will facilitate regulatory compliance in other states for Wisconsin residents.

Analysis and supporting documentation used to determine effect on small businesses

Promulgation of this rule will facilitate Wisconsin–based businesses that offer travel insurance in obtaining non–resident insurance licenses in other states that provide limited line travel insurance licenses. The most efficient method of obtaining a nonresident insurance producer license is to hold a license with the same authority in the producer’s state of residence. This allows the producer to apply for nonresident licenses in other states and comply with the licensing requirements of the producer’s state of residence.

Initial Regulatory Flexibility Analysis

This rule would have a positive effect on small businesses that offer travel insurance in Wisconsin and other states.

This rule 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

It is unknown how many agents will seek this authority. The fee for each agent seeking only this line is \$50 under s. Ins 6.59 (3), Wis. Adm. Code. The OCI is making the assumption that there will be about 250 applications initially. One large insurer in this line of business estimates that about 60 employees would be initially licensed for travel insurance. After the initial surge, there might be about 50 total new applications per year resulting in annual revenues of \$2,500.

To implement a new line of insurance, OCI will incur one time programming expenses both for OCI employees and OCI’s licensing vendor. It is unknown precisely the cost but probably around \$2,000 in one time costs.

This rule change will have no state or local government fiscal effect nor a significant effect on the private sector regulated by OCI.

Notice of Hearing Pharmacy Examining Board [CR 07–097]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (2), (3) (d) and (e), Stats., and interpreting ss. 450.11 (1), (4) and (4g) (b) and 450.12, Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Phar 7.02, relating to prescription labels.

Hearing Information

Date: **December 5, 2007**
Time: 9:30 a.m.
Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 121A
Madison, Wisconsin

Appearances at the Hearing and Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in

writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before December 7, 2007, to be included in the record of rule–making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

Statutes interpreted

Sections 450.11 (1), (4) and (4g) (b) and 450.12, Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (2), (3) (d) and (e), Stats.

Explanation of agency authority

The Wisconsin Pharmacy Examining Board is granted the authority to protect the public health, safety and welfare by establishing minimum standards for the practice of pharmacy, which includes the practice activities for a pharmacist and for a pharmacy technician.

Related statutes or rule

Section 450.11 (4g) (b), Stats., and s. Phar 7.02, Wis. Adm. Code.

Plain language analysis

This proposed rule–making will conform a pharmacy practice rule to recent statutory changes brought about by 2005 Wisconsin Act 195. In instances when a drug product equivalent is dispensed, the Act permits inclusion on the label of both the generic name and the brand name of the drug product equivalent specified in the prescription order. The brand name must be omitted from the label if the prescribing practitioner requests that it be omitted.

SECTION 1 amends s. Phar 7.02 to conform the rules to recent statutory changes brought about by 2005 Wisconsin Act 195.

Comparison with federal regulation

There is no existing or proposed federal regulation for summary and comparison.

Comparison with rules in adjacent states

Iowa: Iowa Admin. Code r. 657–6.(10)(1), does not allow a container label to identify a name of a drug product other than that dispensed.

Illinois: 225 Ill. Comp. Stat. 85/25, does not allow a container label to identify a name of a drug product other than that dispensed. No administrative code provision exists.

Michigan: Mich. Admin. Code r. 338.479 (3), allows that if a drug is dispensed that is not the brand prescribed, the purchaser shall be notified and the prescription label shall indicate both the name of the brand prescribed and the brand dispensed. If the dispensed drug does not have a brand name, the label shall indicate the name of the brand prescribed followed by the generic name of the drug dispensed or the reference “G.Eq.,” “generic,” or “generic equivalent” in the case of multi–ingredient products. This does not apply when the prescriber indicates, “do not label.”

Minnesota: Minn R. 6800.3400, the label must contain the generic or trade name of a drug and its strength, except when specified by the prescriber to the contrary.

Summary of factual data and analytical methodologies

The proposed rule will conform a pharmacy practice rule to recent statutory changes brought about by 2005 Wisconsin Act 195, which created Wis. Stat. s. 450.11 (4g) (b). Section Phar 7.02, Wis. Adm. Code, is therefore being amended for conformity with statute.

Analysis and supporting documents used to determine effect on small business

The board did not consult supporting documents other than 2005 Wisconsin Act 195. It is merely updating its rules based on the legislative change.

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.

Initial Regulatory Flexibility Analysis

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 larry.martin@drl.state.wi.us, or by calling (608) 266–8608.

Anticipated Costs Incurred by Private Sector

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

Fiscal Estimate

The department estimates that the proposed rule will have no significant fiscal impact.

Agency Contact Person

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935; telephone 608–266–0495; email pamela.haack@drl.state.wi.us.

Text of Rule

SECTION 1. Phar 7.02 is amended to read:

Phar 7.02 Prescription label; name of drug or drug product dispensed. No ~~prescription drug product~~ may be dispensed unless the prescription label discloses the brand name and strength, or the generic name, strength, and manufacturer or distributor of the ~~drug or~~ drug product dispensed unless the prescribing practitioner requests omission of the above information. ~~The prescription label shall not contain the brand or generic name of any drug or drug product other than that actually dispensed. If a pharmacist, pursuant to a prescription order that specifies a drug product by its brand name, dispenses the drug product equivalent of the drug product specified in the prescription order, the prescription label may include both the generic name of the drug product equivalent and the brand name specified in the prescription order, unless the prescribing practitioner requests that the brand name be omitted from the label. If a brand name drug product is dispensed, the prescription label may contain both the brand name and the generic name of the drug product equivalent dispensed unless the prescribing practitioner requests that the generic name of the drug product equivalent be omitted from the label.~~

Notice of Hearing
Pharmacy Examining Board
[CR 07–099]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a), (b), (d) and (e), Stats., and interpreting s. 450.02 (3) (a), (b), (d) and (e), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal Phar 7.015 (3) (d); and to create Phar 7.015 (2) (q), relating to the transfer of a prescription drug by a pharmacy technician.

Hearing Information

Date: **December 5, 2007**
Time: 9:30 a.m.
Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 121A
Madison, Wisconsin

Appearances at the Hearing and Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before December 7, 2007 to be included in the record of rule–making proceedings.

Analysis Prepared by Department of Regulation and Licensing

Statutes interpreted

Section 450.02 (3) (a), (b), (d) and (e), Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a), (b), (d) and (e), Stats.

Explanation of agency authority

The Wisconsin Pharmacy Examining Board is granted the authority to protect the public health, safety and welfare by establishing minimum standards for the practice of pharmacy, which includes the practice activities for a pharmacist and for a pharmacy technician.

Related statutes or rule

Section Phar 7.015, Wis. Adm. Code

Plain language analysis

Chapter Phar 7 defines mandatory and permissible pharmacy practice activities for a pharmacist and for a pharmacy technician. The proposed rule change would amend provisions of the current rule that relate to when and how a technician may transfer a prescription to a patient or agent of a patient.

Rules of the Pharmacy Examining Board identify in s. Phar 7.015 that pharmacy technicians may be assigned by a pharmacist certain tasks relating to receiving prescriptions and preparing and dispensing drugs. The proposed modification will clarify that a pharmacy technician may permissibly transfer a prescription order to a patient or an

agent of the patient if the pharmacist has first provided a patient consultation.

SECTION 1 creates a provision allowing a pharmacy technician to transfer a prescription order to a patient or an agent of the patient if a pharmacist has first provided a patient consultation.

SECTION 2 repeals a provision prohibiting a pharmacy technician from transferring a prescription order to a patient or an agent of the patient.

Comparison with federal regulations

There is no existing or proposed federal regulation for summary and comparison.

Comparison with rules in adjacent states

Iowa: Rules: Although not explicitly addressed, by implication the transfer of prescriptions to patients is allowed as a delegated act by the pharmacist when the pharmacist is present in the pharmacy. Iowa Admin. Code r. 657–3.21, requires the pharmacist to be on site when delegating to technicians. Iowa Admin. Code r. 657–3.23, prohibits a technician from counseling but not from transferring the prescription. Iowa Admin. Code r. 657–3.22, the transfer of the prescription is not included in a list of technical functions a technician may perform, but the list is not exhaustive. Iowa Admin. Code r. 657–6.7(3), prohibits non technical dispensing activities in the absence of the pharmacist.

Illinois: Rules: Ill. Admin. Code tit. 68 § 1330.80, requires a pharmacist to be present when a prescription is distributed to the ultimate consumer. By implication a prescription transfer may occur from the technician to a patient as a non discretionary act.

Michigan: Rules: Mich. Admin. Code r. 338.490(5), outlines what a pharmacist shall do in delegating without specifying what can or cannot be delegated. Written procedures must be provided to the delegate. By implication the transfer of prescriptions to patients by technicians is allowed as a delegated act by the pharmacist.

Minnesota: Rules: Minn R. 6800.3100, does not include transfer in the list of what shall be done by the pharmacist. Minn R. 6800.3850, allows technicians to perform technician functions that do not involve professional pharmaceutical judgment. Technician tasks must be included as part of a pharmacy’s written procedures. By implication a prescription transfer may occur from the technician to a patient as a non discretionary act.

Summary of factual data and analytical methodologies

The Pharmacy Examining Board has been made aware from reports from the profession and from investigations undertaken by the Department of Regulation and Licensing’s Division of Enforcement, that in certain circumstances pharmacy technicians have been physically handing a prescription order to the patient and concluding the sale of the prescription order to the patient, after a pharmacist has provided a patient consultation to the patient or agent of the patient. The strict reading of s. Phar 7.015 (3) (d) prohibits the pharmacy technician from transferring a prescription order under any circumstances. The board is therefore aware of the need to clarify this rule provision to clearly state that such a transfer of the prescription to the patient or agent of the patient is permissible provided that the pharmacist has first provided a patient consultation. Adjacent states allow the practice.

Analysis and supporting documents used to determine effect on small business

The board discussed the anticipated effect on pharmacies and decided that delegating the actual transfer without

delegating the consultation would result in greater efficiencies for pharmacies. Some small businesses may benefit from the marginal increase in pharmacist availability for other tasks.

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.

Initial Regulatory Flexibility Analysis

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 larry.martin@drl.state.wi.us, or by calling (608) 266–8608.

Anticipated Costs Incurred by Private Sector

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

Fiscal Estimate

The department estimates that the proposed rule will have no significant fiscal impact.

Agency Contact Person

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935. Telephone: (608) 266–0495. Email: pamela.haack@drl.state.wi.us.

Text of Rule

SECTION 1. Phar 7.015 (2) (q) is created to read:

Phar 7.015 (2) (q) Transferring the prescription to the patient or agent of the patient, provided that the pharmacist has first provided a patient consultation.

SECTION 2. Phar 7.015 (3) (d) is repealed.

Notice of Proposed Rulemaking Regulation and Licensing

[CR 07–098]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) and 458.24, Stats., and interpreting ss. 458.24 and 458.26 (3) (b), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Regulation and Licensing will adopt the following rules as proposed in this notice, without public hearing unless, within 30 days after publication of this notice, on **November 15, 2007**, the Department of Regulation and Licensing 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.

Analysis Prepared by the Department of Regulation and Licensing

Statutes interpreted

Sections 458.24 and 458.26 (3) (b), Stats.

Statutory authority

Sections 227.11 (2) and 458.24, Stats.

Explanation of agency authority

The Department of Regulation and Licensing is authorized under ss. 227.11 (2) and 458.24, Stats., to promulgate rules establishing the standards for appraisal practice for licensed and certified appraisers.

Related statutes or rules

Section RL 86.01 (1) and (2).

Plain language analysis

In this proposed rule–making order, the Department of Regulation and Licensing proposes to amend ch. RL 87, Appendix I, which incorporates by reference the 2006 edition of the Uniform Standards of Professional Appraisal Practice (USPAP). The department proposes to incorporate by reference the 2008 edition of USPAP.

SECTION 1. The department proposes to amend Appendix I, which incorporates by reference the 2006 edition of the USPAP, to incorporate by reference the 2008 edition of USPAP.

As required under Wis. Stats. s. 227.21, the department has obtained the consent of the attorney general to the incorporation of the 2008 edition of USPAP into the rules by reference.

Comparison with federal regulations

The Federal Institutions Reform, Recovery, and Enforcement Act (“FIRREA”), 12 U.S.C. 3331 et seq., (Title XI) was enacted in 1989. Under FIRREA, insured financial institutions and insured credit unions are required to obtain the services of a state certified or licensed appraiser for appraisals conducted in connection with “federally related transactions.”

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council is authorized under FIRREA to monitor the requirements established by the states for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions. *21 USC3333; Appraisal Subcommittee–Policy Statements Regarding State Certification and Licensing of Appraisers.*

Under FIRREA, real estate appraisals performed in connection with federally related transactions are required to be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation. *21 USC 3339; Appraisal Subcommittee–Policy Statements Regarding State Certification and Licensing of Appraisers, Statement 3.*

The appraisal standards promulgated by the ASB are contained in the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP is available on the Appraisal Foundation’s website at:

<http://www.appraisalfoundation.org>.

Comparison with adjacent states

Under FIRREA, all states, including Illinois, Iowa, Michigan and Minnesota, must assure that certified appraisers comply with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board. In Wisconsin, USPAP has been incorporated by reference in Appendix I to ch. RL 87. See also, s. 458.24, Stats.

Summary of factual data and analytical methodologies

No study resulting in the collection of factual data was used relating to this rule. The primary methodology for revising the rule is the department’s and board’s analysis and determination that a rule change is necessary.

Analysis and supporting documents used to determine effect on small business

The proposed rule would change the standards for appraisal practice for licensed and certified appraisers licensed in Wisconsin. There are 839 licensed appraisers, 1,025 residential appraisers, and 650 certified general appraisers who are licensed in Wisconsin and would have to comply with the standards. Of the appraisers in Wisconsin with credentials, a majority of them probably work in small businesses.

Under the Federal Reform, Recovery and Enforcement Act (FIRREA), all states must assure that certified appraisers comply with the Uniform Standards of Appraisal Practice that are promulgated by the Appraisals Standards Board. This will be the latest update of practice standards and will not have an effect on small business.

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.

Initial Regulatory Flexibility Analysis

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 larry.martin@drl.state.wi.us, or by calling (608) 266–8608.

Fiscal Estimate

The department estimates that the proposed rule will have no significant fiscal impact.

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

Agency Contact Person

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935; telephone (608) 266–0495; email pamelahaack@drl.state.wi.us.

Submission of Written Comments

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email at

pamela.haack@drl.state.wi.us. Comments must be received on or before December 15, 2007, to be included in the record of rule–making proceedings.

Text of Rule

SECTION 1. Ch. RL 87, Appendix I is amended to read:

Chapter RL 87

APPENDIX I

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

The ~~2005~~ 2008 edition of the Uniform Standards of Professional Appraisal Practice (USPAP) is hereby incorporated by reference into this Appendix. The ~~2005~~ 2008 edition of USPAP is effective January 1, ~~2005~~ 2008 to ~~June 30, 2006~~ December 31, 2009.

After January 1, ~~2005~~ 2008, copies of the ~~2005~~ 2008 edition of USPAP may be purchased from the Appraisal Standards Board of the Appraisal Foundation, 1155 15th Street, N.W., Suite 1111, Washington, D.C. 20005, and (202) 347–7722. After January 1, ~~2005~~ 2008, copies of the ~~2005~~ 2008 edition of USPAP may also be obtained, at no charge, from the Appraisal Foundation’s website at <http://www.appraisalfoundation.org>. ~~The direct link to the electronic copy of the 2005 and prior year publications of the Uniform Standards of Professional Appraisal Practice is: http://www.appraisalfoundation.org/html/standards.asp?File Name=current_uspap.~~

The 2006 edition of the Uniform Standards of Professional Appraisal Practice (USPAP) is hereby incorporated by reference into this Appendix. The 2006 edition of USPAP is effective July 1, 2006 to December 31, 2007.

After July 1, 2006, copies of the 2006 edition of USPAP may be purchased from the Appraisal Standards Board of the Appraisal Foundation, 1155 15th Street, N.W., Suite 1111, Washington, D.C. 20005, (202) 347–7722. After July 1, 2006, copies of the 2006 edition of USPAP may also be obtained, at no charge, from the Appraisal Foundation’s website at: <http://www.appraisalfoundation.org>.

Note: As required under s. 227.21, Stats., the attorney general ~~and~~ ~~revisor~~ ~~of~~ ~~statutes~~ ~~have~~ ~~has~~ consented to the incorporation by reference of the ~~2005~~ ~~and~~ ~~the~~ ~~2006~~ ~~editions~~ 2008 edition of the Uniform Standards of Professional Appraisal Practice. Copies of the ~~2005~~ ~~and~~ ~~the~~ ~~2006~~ ~~editions~~ 2008 edition of the USPAP will be on file in the offices of the department, the secretary of state and the revisor of statutes.

Submittal of Proposed Rules to the Legislature

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

Commerce
(CR 07–008)

Ch. Comm 67, relating to rental unit energy efficiency.

Natural Resources
(CR 06–109)

Ch. NR 440, relating to incorporation of revisions and additions to the federal New Source Performance Standards.

Rule Orders Filed with the Revisor of Statutes Bureau

The following administrative rule orders have been filed with the Revisor of Statutes 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 Revisor of Statutes Bureau at gary.poulson@legis.wisconsin.gov or (608) 266–7275 for updated information on the effective dates for the listed rule orders.

Commerce (CR 07–063)

An order affecting ch. Comm 133, relating to implementing a film production accreditation program.
Effective 1–1–08.

Natural Resources (CR 06–039)

An order affecting ch. NR 5, relating to sound testing methods for boats.
Effective 1–1–08.

Transportation (CR 07–065)

An order affecting ch. Trans 128, relating to the traffic violation and registration program.
Effective 1–1–08.

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