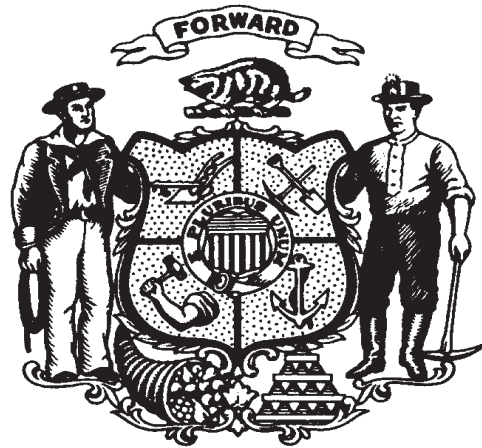


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Table of Contents

Emergency Rules Now in Effect.**Pages 4 to 8**

Agriculture, Trade and Consumer Protection:

Rules relating to credit report security freezes.

Rules relating to voluntary certification of firewood dealers.

Commerce:

Licenses, Certifications, etc., Ch. Comm 5

Rules relating to licensing of elevator contractors and installers.

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

Rules relating to tax credits and exemptions for internet equipment used in the broadband market.

Dentistry Examining Board:

Rules amending the effective date of an emergency rule that took effect on December 29, 2006, relating to anesthesia administration; and delaying the effective date of the permanent rule. **[First Appearance]**

Elections Board:

Rules relating to pricing of voter information available from the Statewide Voter Registration System.

Health and Family Services:

Community Services, Chs. HFS 30—

Rules relating to the adoption of children to include preadoption training requirements that will apply to private adoptions, international adoption, and adoptions of children with special needs and affecting small businesses.

Medical Assistance, Chs. HFS 100—

Rules relating to benefits covered by the Wis. Medical Assistance program, and affecting small businesses.

Natural Resources:

Fish and Game, etc., Chs. NR 1—

Rules relating to contracting for timber sale establishment services on state land.

Rules relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Rules relating to the control of fish diseases and invasive species.

Rules relating to the control of fish diseases and invasive species.

Rules relating to control of fish diseases and invasive species.

Environmental Protection–Water Regulation, Chs. NR 300—

Rules relating to general permits for dredging Great Lakes navigable waterways.

Workforce Development:	<u>Workforce Solutions, Chs. DWD 11 to 59</u> Rules relating to child care rates. Rules relating to child care enrollment underutilization.
Scope Statements.	Pages 9 to 12
Health and Family Services:	Rules affecting chs. HFS 173, 175, 178, 195, 196, 197 and 198 relating to the increase of fees for various establishments.
Natural Resources:	Rules relating to the state wildlife grants program.
Revenue:	Rules affecting ch. Tax 2, relating to apportionment income of interstate professional sports clubs.
Transportation:	Rules affecting ch. Trans 112, relating to non–medical requirements for school bus drivers.
Submittal of Rules to Legislative Council Clearinghouse.	Page 13
Agriculture, Trade and Consumer Protection:	Rules affecting chs. ATCP 140, 141, 147, and 148, relating to agricultural marketing orders.
Elections Board:	Rules affecting ch. ElBd 3, relating to voter registration.
Employee Trust Funds:	Rules affecting ch. ETF 11, relating to hearsay evidence in administrative appeal hearings.
Transportation:	Rules affecting ch. Trans 128, relating to the traffic violations registration program (TVRP). Rules affecting ch. Trans 195, relating to fees and procedures for searches and documentation of the Division of Motor Vehicles.
Rule–Making Notices.	Pages 14 to 28
Agriculture, Trade and Consumer Protection:	Hearings to consider rules affecting chs. ATCP 10 and 11, relating to animal health fees. Hearings to consider rules affecting chs. ATCP 140, 141, 147, and 148, relating to agricultural marketing orders and Wisconsin commodities.
Employee Trust Funds:	Hearing to consider rules affecting ch. ETF 11, relating to hearsay evidence in administrative appeal hearings.
Funeral Directors Examining Board:	Hearing to consider rules affecting ch. FD 4, relating to continuing education requirements.
Natural Resources:	Hearings to consider rules affecting ch. NR 115, relating to minimum standards for county shoreland zoning ordinances.
Transportation:	Hearing to consider rules affecting ch. Trans 128, relating to the traffic violations registration program (TVRP).

	Hearing to consider rules affecting ch. Trans 195, relating to fees and procedures for searches and documentation of the Division of Motor Vehicles.
Veterinary Examining Board:	Hearing to consider rules affecting chs. VE 1, 7 and 10, relating to continuing education, informed consent and recordkeeping.
Submittal of Proposed Rules to the Legislature.	Page 29
Health and Family Services:	CR 07-053 — Ch. HFS 119, relating to HIRSP.
Insurance:	CR 07-023 — Ch. Ins 50, relating to annual audited financial reports, financial statements and examinations.
Public Service Commission:	CR 07-020 — Ch. PSC 133, relating to construction, installation, and placing in operation of natural gas facilities.
	CR 07-021 — Ch. PSC 114, relating to the Wisconsin State Electrical Code, Volume 1.
Workforce Development:	CR 07-018 — Ch. DWD 301, relating to migrant labor.
Rule Orders Filed with the Revisor of Statutes Bureau.	Page 30
Commerce:	CR 07-007 — Chs. Comm 5 and 20, relating to dwelling contractor certification.
Health and Family Services:	CR 07-028 — Ch. HFS 51, relating to pre-adoption training for adoptive parents.
Natural Resources:	CR 06-104 — Ch. NR 432, relating to major electric generating units.
	CR 06-121 — Ch. NR 820, relating to designation of groundwater management areas, reporting and environmental review of high capacity well applications and evaluation of wells with greater than 95% water loss.
	CR 06-132 — Ch. NR 5, relating to mandatory boating education, temporary certifications and course fees.
	CR 06-133 — Ch. NR 5, relating to registration of boats used to make advertisements and the creation of definitions.
	CR 06-134 — Ch. NR 19, relating to specialized fees for Internet based ATV and snowmobile safety certification programs.
Regulation and Licensing:	CR 06-125 — Chs. RL 4 and 174 to 177, relating to registration of sanitarians.
Transportation:	CR 06-103 — Ch. Trans 200, relating to specific information signs.
Workforce Development:	CR 06-032 — Ch. DWD 133, relating to unemployment insurance and temporary help employers.

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 & Consumer Protection (2)

- Rules adopted creating **ch. ATCP 112**, relating to credit report security freezes.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) will administer s. 100.54, Stats. as of January 1, 2007. DATCP is required under s. 100.54 (12), Stats. to adopt rules related to identification required of consumers requesting credit report security freezes.

(2) As of January 1, 2007, s. 100.54, Stats. will be in effect, however without an emergency rule the statute will be unclear regarding what constitutes proper identification for purposes of creating a security freeze, temporarily releasing a security freeze or permanently removing a security freeze from a consumer credit report.

(3) DATCP is adopting this emergency rule for the sole purpose of allowing consumers to clearly place a security freeze on their consumer credit report while the permanent rulemaking process is completed.

Publication Date: January 19, 2007
Effective Date: January 19, 2007
Expiration Date: June 18, 2007
Hearing Date: February 12, 2007

- Rules adopted creating **s. ATCP 21.20**, relating to voluntary certification of firewood dealers.

Finding of Emergency

(1) The Wisconsin department of natural resources (“DNR”) has adopted rules, under s. NR 45.04 (1) (g), to restrict the movement of firewood into Wisconsin state parks. The DNR rules are designed to prevent the spread of exotic pests, such as Emerald Ash Borer, that may inhabit firewood. The DNR rules prohibit the possession of firewood in a state park unless the firewood comes from within 50 miles from the park, or from a more distant source approved by the Department of Agriculture, Trade and Consumer Protection (“DATCP”).

(2) The DNR rules effectively prohibit a firewood dealer located more than 50 miles from a state park from supplying firewood to that state park, except as authorized by DATCP. That prohibition may work a substantial hardship on firewood dealers who normally supply significant quantities of firewood to parks located more than 50 miles away.

(3) This rule creates a voluntary certification program for firewood dealers who obtain their wood from Wisconsin and agree to treat the wood for potential pests such as Emerald Ash Borer. Certified firewood dealers may supply firewood to Wisconsin state parks, even though they are located more than 50 miles from those parks.

(4) DATCP is adopting this rule as a temporary emergency rule, pending completion of “permanent” rulemaking proceedings. DATCP cannot complete permanent rules in time for the 2007 camping season. Without this emergency rule, certain firewood dealers may experience unnecessary financial hardship during the 2007 camping season, because they will be precluded from supplying firewood to state parks more than 50 miles away. This emergency rule allows those firewood dealers to continue supplying firewood to more distant state parks, subject to sourcing and treatment requirements that are reasonably designed to prevent the spread of serious exotic pests.

Publication Date: May 22, 2007
Effective Date: May 22, 2007
Expiration Date: September 19, 2007
Hearing Date: June 26, 2007

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: October 29, 2007
Hearing Date: June 27, 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

Health and Family Services (Community Services, Chs. HFS 30—)

Rules adopted revising **ch. HFS 51**, relating to the adoption of children to include preadoption training requirements that will apply to private adoptions, international adoption, and adoptions of children with special needs and affecting small businesses.

Finding of Emergency

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

On April 10, 2006, the Wisconsin State Legislature enacted 2005 Wisconsin Act 293, which amended s. 48.84, Stats., to require first-time adoptive parents to receive preadoption training before a child may be placed for adoption by a court pursuant to s. 48.833, Stats., or before a prospective adoptive parent may petition for placement of a child for adoption under s. 48.837, Stats., or before a proposed adoptive parent may bring a child into Wisconsin for an international adoption under s. 48.839, Stats. The Act further requires the Department to promulgate rules that establish the number of hours and topics covered in the training of first-time adoptive parents. The training must cover issues that may confront adoptive parents in general and that may confront adoptive parents of special needs or international children.

The Act requires the rules to be effective April 1, 2007. Because the rules apply not only to the Department which administers the special needs adoption program with the assistance of private agencies under contract with the Department, and with the cooperation of county human and social service agencies, but also to private agencies that handle domestic adoptions and international adoptions, the Department has invested a significant amount of time gathering information from agencies regarding what training is currently provided to preadoptive parents. The Department conducted written and follow-up telephone surveys with private agencies to determine what content was currently being taught, and the format used for training. The Department's Adoption Services Committee met over several months to determine the curriculum for special needs adoption, the competencies that would be required for all training programs, the number of hours and the documentation that would be required in the training. In addition, the Department reviewed the proposed Hague Convention (federal) training requirements for proposed adoptive parents of international children to assure that Wisconsin's training requirements for first-time pre-adoptive parents would meet or exceed those requirements.

As a result of this extensive collaboration with stakeholders, development of the proposed training requirements has been unusually long and now requires the training requirements to be implemented as an emergency rule in order to meet the legislated date of April 1, 2007, the date adoptive parents must begin receiving preadoptive training.

This emergency rules are substantially similar to the proposed permanent rules except in the hours of training required. Under the emergency order, adoption agencies are required to provide adoptive parents with 2 hours of orientation and 10 hours of training. The proposed permanent rule requires adoption agencies to provide 2 hours of orientation and 16 hours of training. Stakeholder agencies have indicated that the additional 5 months under the

emergency rule will allow them to prepare all proposed adoptive parents to meet the orientation and training requirements under the proposed permanent rules.

Publication Date: March 31, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007
Hearing Date: April 27, 2007

Health and Family Services (Medical Assistance, Chs. HFS 100—)

Rules adopted revising **ch. HFS 107**, relating to benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

Finding of Emergency

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

A recent revision to s. HFS 107.07 (2), the prior authorization subsection of the dental services section of the Medicaid Administrative Code, caused a result which was not intended by the Department. To correct this error, the Department is promulgating rules to clarify that the Department's intent is to require prior authorization for orthodontia and other services provided under early and periodic screening, diagnosis and treatment (EPSDT) services. The medical necessity of these services is determined by the Department based on information submitted by the provider. Thus, it is necessary to require prior authorization to determine the appropriateness of providing these services to an individual recipient.

In the previous rulemaking (Clearinghouse Rule 05-033) the prior authorization requirement was removed for most procedures that had high rates of approval (greater than 75%). The change was intended to reduce the staff time required for dental offices to process prior authorization requests. The Department did not intend to remove the requirement for prior authorization for orthodontia and other services. The Department specifically stated, in Clearinghouse Rule 05-033, that "Procedures where appropriate pricing requires a high degree of clinical knowledge (e.g., orthodontics and TMJ surgery), and procedures with strict time limitations (e.g., dentures) are also proposed to retain prior authorization."

The language that was adopted, however, has been interpreted by at least one dentist to mean that prior authorization is no longer required to provide orthodontia to recipients. This interpretation was upheld by an administrative law judge in an administrative hearing. The Department believes that the interpretation of the administrative law judge could open up the Department to being required to pay for procedures that are purely cosmetic. Because the intent of the Department and the language adopted, as recently interpreted, had opposite effects, the Department is promulgating rules to revise section s. HFS 107.07 to clarify the intent of the rule.

A basic concept of the Medicaid program is that services must be medically necessary to be reimbursable. Allowing the existing rule language to remain in its present form could require reimbursement for orthodontia that is not medically justified.

Publication Date: April 30, 2007
Effective Date: April 30, 2007
Expiration Date: September 27, 2007

Natural Resources (5)
(Fish and Game, etc., Chs. NR 1—)

1. Rules adopted amending s. NR 1.21 and creating s. NR 1.26, relating to contracting for timber sale establishment services on state land.

Exemption From Finding of Emergency

As provided in section 13 of 2005 Wis. Act 166, "Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide a finding of emergency for a rule promulgated under this subsection."

Section 1 of the proposed rule distinguishes between timber sales related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services, including prequalification of bidders based on experience with timber sales and related forest inventory work. Section 2 makes technical corrections in the definition of educational requirements for cooperating foresters. The change would make educational requirements for cooperating foresters and department foresters identical, including the allowance of training equivalent to that obtained at a college accredited by the Society of American Foresters.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

2. Rules adopted creating s. NR 45.075, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Exemption From Finding of Emergency

As provided in section 13 of 2005 Wis. Act 166, notwithstanding s. 227.24, Stats., the Department is not required to provide a finding of emergency for this rule and the emergency rule will remain in effect until a permanent rule is promulgated.

Rule FR-11-07(E) specifies those emergencies on forested land under the jurisdiction of the department over which the chief state forester shall have management authority. This rule describes causes of unforeseen damage or threat of damage to trees that could lead the chief state forester to declare an emergency and assume management authority. Included in the list of damaging agents that could lead to the declaration of an emergency are those required by the legislature: invasive species, pest infestation, disease, and damage to timber from fire, snow, hail, ice, or wind. The rule states that when declaring and responding to an emergency, the chief state forester shall consider the purpose of and management plan for the affected property in his or her decisions. This rule, however, would allow the chief state forester to take actions not described in the management plan for a property if that were the most appropriate response to the emergency. Finally, this rule describes the processes by which

the declaration of the state of emergency shall be made effective, canceled or modified.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

3. Rules adopted revising chs. NR 19 and 20, relating to the 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. 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: April 8, 2007
Effective Date: April 8, 2007
Expiration Date: September 5, 2007
Hearing Date: May 3, 10 and 17, 2007

4. Rules adopted revising chs. NR 19 and 20, relating to the control of fish diseases and invasive species.

Finding of Emergency

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.

This emergency rule clarifies and expands the emergency rules put into effect on April 8, 2007.

Publication Date: May 2, 2007
Effective Date: May 2, 2007
Expiration Date: September 5, 2007
Hearing Date: June 11, 2007

5. Rules adopted revising emergency rules 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 the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The 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 were infected with the VHS 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 disease to reach the Mississippi drainage basin. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDAAPHIS, including most of our most important recreational and commercial 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: May 27, 2007
Effective Date: May 27, 2007
Expiration Date: September 5, 2007
Hearing Date: July 11, 2007

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

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

Workforce Development (2) (Workforce Solutions, Chs. DWD 11 to 59)

1. Rules adopted revising **s. DWD 56.06**, relating to child care rates and affecting small businesses.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that 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 estimates that the child care subsidy program will have a tight budget by the end of fiscal year 06–07. This is due to flat federal funding, rising caseload, and increased provider costs. To begin to address the tight budget, the Department will not increase the child care subsidy maximum rates for 2007. This emergency rule will maintain the maximum rates at 2006 levels.

Publication Date: January 22, 2007
Effective Date: January 22, 2007
Expiration Date: June 21, 2007
Hearing Date: May 7, 2007

2. 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

Scope Statements

Health and Family Services

Subject

The Department of Health and Family Services proposes to modify ch. HFS 173, relating to tattooing and body piercing establishments to increase license fees, pre-inspection fees, and practitioner fees and to create a re-inspection fee, a fee for late renewal, a fee for operating without a license, and a fee for special condition inspections; to modify ch. HFS 175, relating to recreational and educational camps to increase permit, pre-inspection, and late renewal fees and to create a re-inspection fee, a fee for operating without a permit, and a fee for special condition inspections; to modify ch. HFS 178, relating to campgrounds to increase permit and late renewal fees and to create pre-inspection and re-inspection fees, a fee for operating without a permit, and a fee for special condition inspections; to modify ch. HFS 195, relating to hotels, motels, and tourist rooming houses to increase permit, pre-inspection, and late renewal fees and to create a re-inspection fee, a fee for operating without a permit, and a fee for special condition inspections; to modify ch. HFS 196, relating to restaurants to increase permit, pre-inspection, and late renewal fees, to create a re-inspection fee, a fee for operating without a permit, a fee for operating without a certified operator, and a fee for special condition inspections, and to revise the restaurant complexity ratings; to modify ch. HFS 197, relating to bed and breakfast establishments to increase permit, pre-inspection, and late renewal fees and to create a re-inspection fee, a fee for operating without a permit, and a fee for special condition inspections; to modify HFS 198 relating to vending of food to increase permit, pre-inspection, and late renewal fees and to create a re-inspection fee, a fee for operating without a permit, and a fee for special condition inspections. In addition to modifying fees, the department may update the above identified rules as needed to ensure continued consistency between rules and current practice.

Policy Analysis

Before a person may operate a tattooing or body piercing establishment, recreational or educational camp, campground, hotel, motel, tourist rooming house, bed and breakfast establishment, restaurant, or a vending machine commissary or vending machine, the person is required by state law to have a permit or a license issued by the department upon a successful pre-inspection and payment of the license or permit fee, pre-inspection fee, and all other applicable fees established by the department by rule. In addition, state law prohibits a person from operating or maintaining a restaurant unless the person or a manager holds a current, valid certified manager's certificate from the department.

For recreational and educational camps, campgrounds, hotels, motels, tourist rooming houses, bed and breakfast establishments, restaurants and vending, the department is required under ss. 252.23 (4), 252.24 (4), 254.47 and 254.68, Stats., to establish by rule, license and permit fees, pre-inspection fees, re-inspection fees, fees for operating without a permit or license, and fees for untimely permit or license renewal. For tattoo establishments and body piercing

establishments, the department is required to establish, by rule, fees to offset the costs of licensing establishments.

License/Permit, Pre-inspection and Late Renewal Fees. The department intends to increase or create license/permit fees, pre-inspection fees and late renewal fees pursuant to its authority under ss. 252.23 (4), 252.24 (4), 254.47 and 254.68, Stats., as a means of achieving a more appropriate state staffing level and improving local service delivery. Though the department actively encourages local public health departments to provide environmental health regulatory services by acting as agents of the state, many local governments opt-out because the fee structure will not sustain appropriate inspection and licensing activities. The department believes that changes in fees will help the department increase the number of agencies providing local services. In addition, this will bring the number of inspections per state inspector more in line with FDA's recommended guidelines, ultimately providing better protection and service within the state.

Except for tattooing and body piercing establishments, license/permit fees and pre-inspection fees were last revised in 2002. Permit and pre-inspection fees for tattooing and body piercing establishments and practitioner license fees were last revised in 1998. Fees for late renewal were last revised for all entities in 1998. None of the regulated entities have been subject to re-inspection fees or fees for operating without a license. Although it is difficult to match program for program in comparison with other states, Wisconsin's fees are typically lower.

To further augment the licensing and inspection program, the department intends to create a re-inspection fee, a fee for operating without a permit or license, a fee (for restaurants only) for operating without a certified operator, and a fee for special condition inspections.

Re-inspection Fee. The department intends to create a re-inspection fee to assess facilities that pose increased risk to the public due to significant violations of the public health and safety rules. The department has determined that operators that fail to maintain safe conditions, not only present an increased risk to the public, but also consume a disproportionately larger share of public health resources than those operators that function safely.

Fee for Operating without a Permit or License. The department is required under s. 254.47 (4), Stats., to establish by rule fees for operating campgrounds and recreational and educational camps without a permit, and under s. 254.68, Stats., to establish by rule fees for operating a hotel, restaurant, temporary restaurant, tourist rooming house, vending machine commissary or vending machine without a permit. Although there is no statutory requirement that the department establish a comparable rule for tattooists or body-piercing establishments, the department believes that ss. 252.23 (4) and 253.24(4), Stats., give it general authority to do so. The department intends to assess this fee to persons that fail to obtain a permit or license and pre-inspection before operating a facility. This fee would be collected in addition to the permit or license and pre-inspection fees. Such a fee would not relieve the operator from being subject to a fine under s. 254.88, Stats.

Fee for Operating without a Certified Operator. Section 254.71 (1), Stats., requires that a restaurant have a manager or operator certified in food protection practices. The National Conference of Food Protection recommends that restaurants have certified operators as a means of increasing food safety knowledge and, thereby, reducing the risk of food–borne illnesses. Chapter 12.201.11 of the Wisconsin Food Code (HFS 196 Appendix) requires restaurants to have a certified operator within six months of opening or within six months of losing an existing certified operator. Due to past difficulties in encouraging compliance with this risk–reduction standard, the department proposes to assess a fee on any restaurant that operates without a certified operator.

Fee for Special Condition Inspections. As part of the department’s general responsibility for oversight of public health, the department routinely conducts inspections, without reimbursement, for state, local and private sector entities for activities that are not directly related to the department’s permitting and licensing responsibilities. Because these requests and subsequent inspections have become routine and are not supported under the department’s licensing fee structure, the department intends to create a “special condition inspection” fee to offset the costs for conducting these inspections. Examples of special condition inspections include sanitation inspections of liquor establishments for liquor licenses, establishment pre–purchase compliance inspections for parties intending to purchase DHFS–regulated facilities, preliminary inspections of complex waterpark facilities, and food safety inspections at schools participating in the National School Lunch (NSLP) or School Breakfast Programs (SBP).

HFS 196 Restaurant Complexity Rating – Frozen versus Thawed Meat Handling. Retail food service establishments are rated for complexity based on an evaluative formula. Entities that handle raw meat, poultry and seafood pose a greater risk for introducing food–borne contamination and, as such, have a higher level of complexity and an expectation for more frequent and detailed inspections. Entities that handle frozen and preformed meat patties, chicken breasts, or breaded, chopped or comminuted meats are currently categorized as less complex. However, the department has determined through program evaluation that there is no discernable difference in risk between handling frozen pre–formed meats and raw poultry, meat or seafood. Therefore, the department intends to modify the restaurant code (HFS 196) to revise the complexity rating formula under s. HFS 196.04 for restaurants that handle frozen pre–formed meat patties, chicken breasts, and breaded, chopped or comminuted meats. Specifically, the department intends to re–categorize entities that handle frozen pre–formed meat patties, chicken breasts, and breaded, chopped or comminuted meats to the same level that applies to raw meat handling. In some instances, this revision of the risk–based complexity rating formula may result in higher fees.

Entities Affected by the Rule

Entities directly affected by these proposed rule change may include:

- Restaurant and other retail food service facilities.
- Hotel, motel and other lodging facilities.
- Campgrounds and recreational and educational camps.
- Tattoo and body piercing facility owners and operators.
- Vending machine owners and operators.
- City and county public health agencies.

Comparison with Federal Regulations

There appears to be no existing or proposed federal regulations that address fee requirements for the entities regulated under the proposed rules.

Statutory Authority

Sections 227.11 (2) (a) (general rulemaking authority); 250.04 (general public health authority); 252.23 (4) (tattooists and tattoo establishments); 252.24 (4) (body piercers and body piercing establishments); 254.47 (4) (campgrounds and recreational and educational camps); 254.74, 254.64, 254.68 (hotels, motels, tourist rooming houses, bed and breakfast establishments, restaurants, vending machine commissaries, vending machines and vending machine locations); 254.71 (6) (certified food operators).

Estimate of Time Needed to Develop the Rule

The DHFS anticipates that approximately 800 hours of staff time will be required to develop the proposed rules. The department will create an advisory committee composed of regulated industry and local public health department representatives to review the fee structure and provide advice on the proposed rules.

Natural Resources

Subject

The rule is relating to the state wildlife grants program.

Policy Analysis

Objective of the rule. The Department requests authorization to begin development of an administrative rule to establish a grant program to help implement the Wildlife Action Plan. The State Wildlife Grants Program, funded through annual Congressional appropriations and administered by the U.S. Fish and Wildlife Service, provides federal money to Wisconsin for cost–effective conservation aimed at preventing wildlife from becoming endangered. The Department will provide financial assistance, through State Wildlife Grant funds, for projects that protect Species of Greatest Conservation Need and their habitats, as described in the Wildlife Action Plan.

Description of Policy Issues/Policy Alternatives. United States laws and policies place the primary responsibility for wildlife management in the hands of the states. State fish and wildlife agencies have a long history of success in conserving game species, thanks to the support of hunter and angler license fees and federal excise taxes. But 90 percent of our Nation’s wildlife is not hunted or fished. As a result, there is a serious gap in wildlife conservation funding, and thousands of species are falling through the cracks.

State Wildlife Grants help fill that gap by supporting projects that prevent *all wildlife* from declining to the point of being endangered. Projects supported by this program protect and restore important lands and waters, collect information on what kinds of wildlife are in trouble, and develop partnerships with landowners to protect declining species and habitats on public and private lands. By emphasizing a proactive approach, the State Wildlife Grants Program helps us take action to protect wildlife and habitats before they become too rare and costly to protect.

In order to make the best use of the State Wildlife Grants Program, Congress charged each state and territory with developing a statewide wildlife action plan. These proactive plans identify species and habitats of greatest conservation need and outline the steps needed to conserve all wildlife and vital natural areas for future generations.

The State Wildlife Grants Program saves taxpayer dollars. Taking action to conserve wildlife before it becomes endangered is environmentally sound and fiscally responsible. Once a species declines to the point of potential extinction, recovery efforts become risky and expensive. A non–federal match requirement assures local ownership and leverages state and private funds to support conservation. In an era of tight budgets, the State Wildlife Grants Program represents how limited federal funds can be invested to get the most results for taxpayers.

Entities Affected by the Rule

State Wildlife Grants support projects that prevent wildlife from declining to the point of being endangered. Projects supported by this program protect and restore important lands and waters, collect information on what kinds of wildlife are in trouble, and develop partnerships with landowners to protect declining species and habitats on public and private lands. Therefore, public land managers and private landowners throughout the state will benefit from this program as well as public agencies, non–governmental environmental groups, researchers at universities and colleges and citizen scientists.

Comparison with Federal Regulations

Several grant programs provide opportunities for private landowners to manage their land for rare species. The U.S. Fish and Wildlife Service provides grants to private landowners through the Partners for Fish and Wildlife Program and the Private Stewardship Grant Program, which both focus on species listed at the federal level as endangered or threatened. The U.S. Fish and Wildlife Service also funds the Landowner Incentive Program (LIP). LIP was authorized by Congress to provide technical and financial assistance to private landowners who are willing to partner with their states to maintain and enhance habitat for “at–risk species”. These rare animals and plants, which are identified by each state, include state– and federally–listed species and other species with small and/or declining numbers in the state. The program is intended for management, restoration and protection of private land with habitat for at–risk species. The Natural Resources Conservation Service provides funds to private landowners to restore habitat for federal or state listed species or special concern species through the Wildlife Habitat Incentive Program. The State Wildlife Grants Program is an opportunity to address the gaps in existing funding and tailor a program unique to Wisconsin.

Statutory Authority

Section 227.11, Stats., and s. 29.604, Stats.; and Department of the Interior and Related Agencies Appropriations Act, 2002, Public Law 107–63; Title I; Land and Water Conservation Fund Act of 1965 U.S. C. 4601–4 through 11.

Estimate of Time Needed to Develop the Rule

The Department will need approximately 170 hours of staff time.

Contact Person

Tara Bergeson, Bureau of Endangered Resources (ER/6)
GEF 2, Madison WI 53707, (608) 264–6043,
Tara.Bergeson@WI.gov

Revenue

Subject

Section Tax 2.505, relating to apportionment of apportionable income of interstate professional sports clubs.

Policy Analysis

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

Entities Affected by the Rule

Professional sports clubs that are engaged in business both in and outside of Wisconsin. Also affected will be entities that prepare Wisconsin franchise or income tax returns for these clubs.

Comparison with Federal Regulations

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

Statutory Authority

Section 227.11 (2) (a), Stats.

Estimate of Time Needed to Develop the Rule

The department estimates it will take approximately 100 hours to develop this rule order.

Transportation

Subject

The rule affects ch. Trans 112, relating to non–medical requirements for school bus drivers.

Policy Analysis

Objective of the Rule. Section Trans 112.15 provides non–medical requirements for school bus drivers. The Department amended the rule in April 2005, as required by 2003 Wisconsin Act 280. That act enumerated crimes and offenses and specified minimum disqualification periods for listed crimes and offenses, but directed the Department to list additional crimes and offenses and to prescribe disqualification periods not less than those specified in the statute. The 2005 rule changes specified additional disqualifying crimes and offenses and, in most cases, increased the disqualification periods beyond those required by statute. Since promulgating the rule, the Department is aware of some disqualifications that seem inappropriately severe given the underlying offense, or given the time passed since the crime or offense was committed.

The rule making will consider the list of disqualifying offenses, the appropriate disqualification period, a process for internal reviews or appeals requested by a disqualified applicant (possibly including consideration of such factors as rehabilitation or other mitigating factors such as those considered in ch. HFS 12, Caregiver Background Checks).

The rule making will also add ordinance violations to disqualifying offenses and prescribe the disqualification periods for those offenses.

Description of Existing Policies. The Wisconsin Department of Health and Family Services requires

background checks of caregivers under ch. HFS 12 and provides disqualification periods intended to protect those served by the caregivers.

Entities Affected by the Rule

School children, school bus drivers, schools, school districts.

Comparison with Federal Regulations

None.

Statutory Authority

Section 343.12, Stats.

Estimate of Time Needed to Develop the Rule

40 hours

Submittal of Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection

On June 28, 2007 the Department of Agriculture, Trade and Consumer Protection submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect chs. ATCP 140, 141, 147 and 148, relating to agricultural marketing orders.

Agency Procedure for Promulgation

The department will hold public hearings on this rule. The department's Division of Agricultural Development is primarily responsible for this rule.

Contact Person

Noel Favia
608-224-5140

Elections Board

On June 6, 2007 the State Elections Board submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect ch. EIBd 3, relating to voter registration.

Agency Procedure for Promulgation

The State Elections Board wishes to promulgate rules pursuant to the 30-day notice procedure under s. 227.16 (2) (e), Stats. The agency person responsible for internally processing this rule is George A. Dunst, legal counsel for the State Elections Board.

Contact Person

George A. Dunst
(608) 266-0136

Employee Trust Funds

On June 25, 2007 the Department of Employee Trust Funds submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule revises ss. ETF 11.06 (1) and 11.12 (2) (b), Wis. Adm. Code, regarding hearsay evidence in administrative appeal hearings.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 1, 2007, at 9:30 AM in the downstairs Conference Room GB at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

The Department's Chief Counsel, Robert Weber, is primarily responsible for this rule.

Contact Person

Robert Weber, Chief Counsel
(608) 266-5804

Transportation

On June 18, 2007, the Department of Transportation submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect ch. Trans 128, relating to the traffic violation and registration program.

Agency Procedure for Promulgation

A hearing is required and is scheduled for August 7, 2007. The Division of Motor Vehicles, Bureau of Vehicles Services is responsible for promulgation of the rules.

Contact Person

Julie A. Johnson, Paralegal
(608) 267-3703

Transportation

On June 18, 2007, the Department of Transportation submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect ch. Trans 195, relating to fees and procedures for searches and documentation of the Division of Motor Vehicles.

Agency Procedure for Promulgation

A hearing is required and is scheduled for August 2, 2007. The Division of Motor Vehicles, Bureau of Vehicles Services and Bureau of Driver Services is responsible for promulgation of the rules.

Contact Person

Julie A. Johnson, Paralegal
(608) 267-3703

Rule–Making Notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 07–061]

(Reprinted from 6/30/07 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule affecting chs. ATCP 10 and 12, that increases some current animal health fees, and creates some new fees. Among other things, this rule affects license fees, voluntary herd certification fees, fees for veterinary certification forms, and fees for voluntary certification of animal health professionals. Some of the fee increases (veterinary certification forms, livestock market licenses, etc.) may affect several sectors of the livestock industry, while others are limited to specific livestock sectors.

DATCP will hold three 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 July 31, 2007, for additional written comments. Comments may be sent to the Division of Animal Health at the address below or by email to hearingcommentsAH@wisconsin.gov.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708–8911. You can also obtain a copy by calling (608) 224–5132 or emailing linda.merrimanhitchman@wisconsin.gov. Copies will also be available at the hearings. To view the proposed rule online, go to: <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@wisconsin.gov 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 July 2, 2007, by writing Anna Oehler, Division of Animal Health, P.O. Box 8911, Madison, WI 53708–8911, telephone 608–224–4875. Alternatively, you may contact the DATCP TDD at 608–224–5058. Handicap access is available at the hearings.

Hearing Dates and Locations

Thursday, July 12, 2007

7:00 p.m. to 9:00 p.m.

Fox Valley Technical College

1825 N. Bluemound Drive, Room C140

Appleton, WI 54912

Monday, July 16, 2007

7:00 pm to 9:00 pm

Dept. of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive

First Floor – Room 106 (Boardroom)

Madison, Wisconsin 53718

Tuesday, July 17, 2007

7:00 p.m. to 9:00 p.m.

Dept. of Natural Resources West Central Region Hdqrs.

1300 W. Clairemont Avenue – Room 158

Eau Claire, WI 54701

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

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) administers Wisconsin’s animal health and disease control program. The program is funded, in significant part, by animal health fees. This rule increases animal health fees in order to remedy a serious deficit in the animal health fee revenue account.

Statutory authority: 93.07 (1), 95.55 (3), 95.57 (2), 95.60 (5), 95.68 (4) and (8), 95.69 (4) and (8), 95.71 (5) and (8), and 95.715 (2) (d).

Statutes interpreted: 93.06 (1d), (1g), (1m), (1p), (1q), 95.55, 95.57 (2), 95.60 (5), 95.68 (4) and (8), 95.69 (4) and (8), 95.71 (5) and (8), and 95.715 (2) (d).

DATCP has broad authority, under s. 93.07 (1), Stats., to adopt rules needed to implement laws under its jurisdiction. DATCP also has authority, under the provisions cited above, to charge certain animal health fees and determine the amount of those fees.

Rule Content.

Fee changes. This rule increases some current animal health fees, and creates some new fees. Among other things, this rule affects license fees, voluntary herd certification fees, fees for veterinary certification forms, and fees for voluntary certification of animal health professionals. Some of the fee increases (veterinary certification forms, livestock market licenses, etc.) may affect several sectors of the livestock industry, while others are limited to specific livestock sectors.

Fee For:	Current Fee:	Proposed Fee:
Certificate of Veterinary Inspection (blank form used by private veterinarians)	\$3 per form (interstate or intrastate)	\$5.60 per form (interstate) \$0.60 per form (intrastate)
Cattle; Brucellosis–Free Herd Certification (Voluntary certification facilitates animal sale and movement)	No fee.	\$50 annual certification
Cattle and Other Bovines; TB–Free Herd Certification (Voluntary certification facilitates sale and movement)	No fee	\$50 annual certification

Fee For:	Current Fee:	Proposed Fee:
Johne's Disease Veterinarian; Certification (Voluntary 3–year certification)	No fee.	\$50 per 3–year certification
Cattle and Other Bovines: Approved Import Feedlot Permit (Voluntary permit facilitates certain imports)	\$75 annual permit	\$140 annual permit
Swine; Qualified Pseudorabies Negative Herd, Qualified Pseudo–Rabies Negative Grow–out Herd, or Feeder Swine Pseudorabies Monitored Herd (Voluntary certification facilitates sale and movement)	No fee	\$50 annual certification
Swine; Validated Brucellosis–Free Herd Certification (Voluntary certification facilitates swine sale and movement)	No fee	\$50 annual certification
Equine Imports; Quarantine Station Permit (station may receive certain horse imports)	No fee	\$100 annual permit and \$100 permit per quarantined animal
Poultry Tester; Training	No fee	\$25 training fee.
National Poultry Improvement Plan; Annual Flock Enrollment	Annual fee ranges from \$40 to \$200 based on flock type and size.	Annual fee ranges from \$80 to \$400 based on flock type and size.
Farm–raised Deer; Annual Herd Registration	Annual fee based on herd size: \$50 if < 15 deer \$100 if > 15 deer \$150 minimum one–time inspection fee for 2 nd herd at same site (not required for renewal). \$100 surcharge if found operating without registration	Annual fee based on herd size: \$162.50 if < 15 deer \$325 if > 15 deer \$200 minimum one–time inspection fee for 2 nd herd at same site (not required for renewal). \$250 surcharge if found operating without registration
Farm–raised Deer; Hunting Preserve Certificate	\$150 for 10–year certificate	\$500 for 10–year certificate
Farm–raised Deer; TB–Free Herd Certification (Voluntary certification facilitates deer sales and movement)	No fee.	\$50 per year of certification
Farm–raised Deer; Brucellosis–Free Herd Certification (Voluntary certification facilitates deer sales and movement)	No fee.	\$50 per year of certification
Fish Farm (Type 1); Annual Registration	\$25 annual fee covers any number of Type 1 fish farms	\$37.50 annual fee covers one Type 1 fish farm; \$50 annual fee covers any number of Type 1 fish farms
Fish Farm (Type 2); Annual Registration	\$50 annual fee covers any number of Type 2 fish farms	\$125 annual fee covers 1–5 Type 2 fish farms; \$150 annual fee covers 6–10 Type 2 fish farms; \$200 annual fee covers 11–20 Type 2 fish farms; \$300 annual fee covers 20 or more Type 2 fish farms.
Fish Import Permit (may cover multiple import shipments for up to one year)	\$50	\$90
Sheep; Brucella–Ovis Free Flock Certification (Voluntary certification facilitates animal sale and movement)	No fee	\$50 per year of certification

Fee For:	Current Fee:	Proposed Fee:
Goats; Brucellosis–Free Flock Certification (Voluntary certification facilitates animal sale and movement)	No fee	\$50 per year of certification
Goats; Tuberculosis Free Flock Certification (Voluntary certification facilitates animal sale and movement)	No fee	\$50 annual certification
Animal Market; Annual License	\$225 annual fee for Class A license \$115 annual fee for Class B license \$150 annual fee for Class C license	\$420 annual fee for Class A license \$220 annual fee for Class B license \$280 annual fee for Class C license
Animal Dealer; Annual License	\$115 annual fee	\$220 annual fee
Animal Trucker; Annual License	\$30 annual fee	\$60 annual fee
Animal Transport Vehicle; Annual Registration Sticker	\$10 annual fee per vehicle	\$20 annual fee per vehicle

Other Rule Changes. This rule eliminates current fish farm registration fee exemptions for research institutions and government agencies. Those entities will now have to pay the same registration fees as other fish farm operators.

Rule Effective Date. This rule will not take effect until calendar year 2008. There are different annual license cycles for different types of licensed entities, and license fee increases will not be implemented until the first annual license cycle beginning after the rule effective date.

Fiscal Estimate

State fiscal effect. Animal Health program operations are funded by a combination of general state tax dollars (79%), animal health fee revenues (19%) and federal funds (2%). This does *not* include federal funds that are passed through to program beneficiaries in the form of grants or other assistance.

Recent state budgets have done the following:

- Reduced annual GPR funding (general tax dollars) for animal health by nearly \$300,000.
- Lapsed approximately \$130,000 in animal health fee revenue (one–time lapse) to the state general fund.
- Assigned more staff to be paid from animal health fee revenues.

Program costs have gone up this year, as DATCP has filled critical animal health positions that had been held vacant. DATCP has only about 37 authorized permanent positions (field and office positions) for its *entire* animal health and disease control program, so it is important that key positions be filled.

As a result of these combined factors, the positive cash balance in the animal health fee revenue account is declining rapidly. DATCP collects about \$300,000 in animal health fees each year, and projects fee revenue expenditures approaching \$600,000 each year. DATCP projects a negative cash balance of \$131,500 in the animal health fee revenue account beginning in FY 2008. If nothing is done, the negative cash balance will go to \$371,400 in FY 2009, \$633,300 in FY 2010 and \$924,500 in FY 2011. DATCP is proposing a fee increase to remedy this funding deficit and maintain critical disease control programs.

This rule will increase animal health fee revenues by approximately \$375,150 per year when it is fully

implemented beginning in FY 2008–09. DATCP projects that this fee increase will stabilize animal health program staffing and funding for the foreseeable future, without further fee increases.

Without this fee increase or other funding support, DATCP will need to reduce animal health staffing at a time when bio–security and disease threats have grown. DATCP has only about 37 permanent staff for *all* of its animal health and disease control programs (does not count temporary, federally–funded positions). Staff reductions will increase risks to Wisconsin’s major livestock industries, which rely on effective animal health and disease control programs. Staff reductions will also increase disease risks to humans and wildlife.

Local fiscal effect. This rule will have no fiscal impact on local units of government.

Business impact. This rule affects animal markets, animal dealers, animal truckers, livestock farmers, deer farmers, fish farmers and veterinarians. Many of these businesses are “small businesses” as defined in s. 227.114 (1) (a), Stats.

This rule increases some current animal health fees, and creates some new fees. Some fee increases may affect several sectors of the livestock industry, while others are limited to specific livestock sectors.

This rule will increase overall industry costs by a combined total of approximately \$375,150 per year, once the rule is fully implemented. Fee increases for individual businesses are generally modest, and will depend on business size and type. Smaller businesses generally pay lower fees than large businesses. Fees are based, in part, on animal health costs related to each affected industry.

This rule does not change other animal health regulations. This rule requires no additional recordkeeping, and no added professional services to comply. For small businesses, the effective date of this rule is automatically delayed by 2 months, pursuant to s. 227.22(2)(e), Stats. The delayed effective date is not expected to have a significant impact on the timing or amount of fee collections under this rule.

Federal Regulation

DATCP administers animal disease control programs in cooperation with the United States Department of Agriculture, Animal and Plant Health Inspection Service (“the federal bureau”).

Federal grants pay for about 2% of Wisconsin's animal health program operations. This does *not* include federal funds that are passed through to program beneficiaries in the form of grants or other assistance.

The federal bureau has well-established control programs for historically important diseases such as tuberculosis and brucellosis. The federal bureau has less well-developed programs for new or localized diseases, or emerging animal-based industries. In those areas, states often play a leadership role. For example, Wisconsin is a recognized national leader in the regulation of farm-raised deer (chronic wasting disease) and aquaculture.

States have independent authority to regulate animal health and movement, including imports from other states. However, states strive for reasonable consistency, based on standards spelled out in federal regulations. States typically incorporate federal standards where they exist, and play a key role in implementing federal standards.

The federal bureau does not license animal businesses, or regulate state fees. This fee rule does not duplicate or conflict with any federal fees or standards.

Surrounding State Programs

Surrounding state animal health programs are broadly comparable to those in Wisconsin, but differ in a number of ways. State programs reflect differences in animal populations, animal-based industries, and disease threats. Programs for historically important diseases, such as tuberculosis and brucellosis, tend to be fairly similar between states and are based on well-established federal standards. Programs for newer diseases or newer forms of agriculture, such as farm-raised deer and aquaculture, tend to be more variable.

Animal health fees fund about 19% of Wisconsin's animal health program operations. In the surrounding states, by contrast, animal health program operations are funded almost entirely by state general fund appropriations. Some states charge almost no license fees. Other states charge fees but deposit them to the state general fund (so they do not have a direct impact on program appropriations).

Minnesota: The state-funded portion of Minnesota's animal health program is funded 98% by state general fund appropriations and 2% by industry fees. The farm-raised deer (chronic wasting disease control) program is the only program that charges fees. That fee is \$10 per farm-raised deer, up to maximum of \$100 per herd.

Iowa: The state-funded portion of Iowa's animal health program is funded 100% by state general fund appropriations. Iowa charges nominal industry fees that are deposited to the state general fund. The cost to collect the fees (which are set by statute) exceeds the amount of revenue produced. Fees include the following:

- \$50 for an annual animal market license, plus \$10 for each market agent.
- \$25 for an annual animal dealer license, plus \$10 for each dealer agent.
- \$5 for an annual pig dealer license, plus \$3 for each dealer agent.
- \$3 for an annual poultry buyer license.
- \$10 for an annual hatchery license.
- \$25 to register a livestock brand for 5 years.
- \$10 for an annual sheep dealer license.
- \$10 for an annual bull breeder license.

Michigan: The state-funded portion of Michigan's animal health program is funded 95% by state general fund appropriations, 2% by segregated fees from racing, and 3% by animal industry fees. Michigan fees include the following:

- \$400 for an annual livestock market (auction) license.
- \$250 for an annual livestock collection point (buy station) license.
- \$150 for an annual horse market (auction) license.
- \$50 for an annual livestock dealer license.
- \$100 for an annual fish farm license (\$75 for a renewal).

Illinois: The state-funded portion of Illinois' animal health program is funded 100% by state general fund appropriations, except that part of its poultry program (eggs) is funded by industry fees. The state also charges some lab testing fees for non-traditional diseases. Illinois charges nominal license fees that are deposited to the state general fund. The cost to collect the fees (which are set by statute) exceeds the amount of revenue produced. Fees include the following:

- \$200 for an annual livestock market (auction) license.
- \$25 for an annual livestock dealer license (\$10 for a renewal license), plus \$10 for each additional business location and \$5 for each dealer agent.
- \$25 for an annual feeder swine dealer license (\$10 for a renewal license), plus \$5 for each dealer agent.

Notice of Hearings

Agriculture, Trade and Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed amendment to chapters ATCP 140, 141, 147 and 148, Wis. Adm. Code, relating to the Marketing Order Program and Wisconsin Commodities organized under ATCP 140. Those commodities being directly affected are Cherries, Ginseng and Mint.

DATCP will hold three 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 Wednesday, August 29, 2007 for additional written comments. Comments may be sent to the Division of Agricultural Development at the address below or by e-mail to noel.favia@datcp.state.wi.us.

Copy of Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Development, Marketing Order Program, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-5140 or emailing noel.favia@datcp.state.wi.us.

Copies will also be available at the hearings. To view the proposed rule online, go to:

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

Comments

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 August 1, 2007, by writing to Noel Favia, Division of Agricultural Development, P.O. Box 8911,

Madison, WI 53708–8911, telephone (608) 224–5140. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearing Dates and Locations

Tuesday, August 9, 2007

7:00 p.m. to 8:00 p.m.

Marathon County, UW Extension Office

212 River Drive, Rooms 1 & 2

Wausau, WI 54403

Tuesday, August 14, 2007

1:00 p.m. to 2:30 p.m.

Wisconsin Dept. of Agriculture

1st Floor, Board Room

2811 Agriculture Drive

Madison, WI 53708

Wednesday, August 15, 2007

7:00 p.m. to 8:00 p.m.

Wisconsin Peninsular Research Station

Conference Room

4312 Hwy 42

Sturgeon Bay, WI 54235

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

Statutory Authority: Sections 93.07 (1), and 96.15, Stats.

Statutes Interpreted: Ch. 96, Stats.

DATCP has general authority, under s. 93.07(1), Stats., to adopt rules interpreting statutes under its jurisdiction. DATCP is specifically authorized, under s. 96.15, Stats., to adopt rules to administer the marketing order program under ch. 96, Stats.

Background

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's agricultural marketing order program under ch. 96, Stats. DATCP may adopt marketing orders for Wisconsin agricultural commodities, with the approval of affected commodity producers. DATCP has adopted marketing orders for cherries, cranberries, corn, milk, mint, soybeans, ginseng and potatoes.

A marketing order imposes assessments on commodity producers. Affected producers elect a marketing board, which spends assessment revenues for purposes specified in the marketing order. Marketing orders may be used to finance market development, research and education. DATCP monitors marketing board activities for compliance with applicable law, including the marketing order.

DATCP has adopted general rules to govern the operation of marketing orders and marketing boards. DATCP must also adopt marketing orders as rules. Affected producers must approve (by referendum) the adoption, amendment or repeal of a marketing order. DATCP may bill a marketing board for administrative services provided to the marketing board.

Rule Contents

This rule does all of the following:

- Amends current rules (ATCP 140) governing all marketing order referenda and marketing board elections:
 - Authorizes, but does not require, DATCP to conduct referenda and elections by electronic mail.

- As an alternative to mailing ballots to all eligible producers in a marketing board election (but not a marketing order referendum), authorizes DATCP to notify producers how they may obtain election ballots.
- Amends the cherry marketing order (ATCP 141) to eliminate the requirement of an advisory referendum every 4 years (non-binding advisory referendum asks producers whether they wish to continue the cherry marketing order). A marketing order may be repealed at any time, with or without a non-binding advisory referendum, if the repeal is approved in a formal binding referendum of affected producers.
- Repeals the mint marketing order (ATCP 147).
- Amends the ginseng marketing order (ATCP 148):
 - Eliminates the current annual producer assessment based on sales, and replaces it with an assessment based on acres in ginseng production.
 - The ginseng marketing board must annually determine the assessment rate, which may not exceed \$150 per acre in ginseng production. The ginseng board may require affected producers to report acreage in production.
 - The ginseng board may verify reported acreage by aerial photography or other reliable means.
 - The ginseng board must annually notify each producer of the assessment amount owed by that producer.
 - DATCP no longer determines assessment amounts, but may audit the ginseng board's determination of assessment amounts.
 - Eliminates the requirement of an advisory referendum every 5 years (advisory referendum asks producers whether they wish to continue the ginseng marketing order). A marketing order may be repealed at any time, with or without a non-binding advisory referendum, if the repeal is approved in a formal binding referendum of affected producers.
- Makes other minor changes to current rules.

The voting requirement for the amendments to the cherry, ginseng and mint marketing orders as provided in s. 96.08 (1) (b) 3., Stats., is that the applicable referendum must be approved by not less than 50% of the producers voting provided that 50% of the producers on the established list vote in the referendum. For each of the cherry, ginseng and mint marketing orders, the voting requirement identified in s. 96.08 (1) (b) 3., Stats., was used to adopt the original marketing order.

Business Impact

Businesses Affected. In a general sense, this rule affects producers of all agricultural commodities that are covered by an agricultural marketing order or that may be covered in the future. This rule more specifically affects cherry, mint and ginseng producers. Many of the affected businesses are "small businesses." The effects of this rule are generally insignificant.

Agricultural producers; general. This rule gives DATCP more procedural flexibility related to the conduct of marketing order referenda and marketing board elections. Under this rule:

- DATCP may use electronic mail to conduct referenda and elections (DATCP is not required to use electronic mail).
- In a marketing board election (but not a marketing order referendum), DATCP may notify producers how to obtain ballots rather than actually mailing ballots to all producers.

DATCP may use these alternative procedures where appropriate. In appropriate circumstances, the alternative procedures may be at least as effective in encouraging producer participation, and may be substantially cheaper. Cost savings may be passed on to marketing boards and individual producers. Cost savings to individual producers will not be significant.

Mint Producers. This rule repeals the current mint marketing order, and eliminates the producer assessments associated with that order. There may be some cost savings to individual mint producers, but the savings will be insignificant. Currently, there are only 14 mint producers in Wisconsin.

Cherry Producers. This rule repeals a current marketing order provision that requires an advisory referendum of cherry producers every 4 years, to determine whether they support continuation of the marketing order. The repeal will save some costs for the marketing board and affected producers. The savings for individual producers will not be significant.

Ginseng Producers. This rule requires ginseng marketing order assessments based on acres in production, rather than sales. Sales assessments are difficult to collect, because most buyers are outside the United States. This rule will charge assessments based on reported acres in production (verified by aerial photography or other reliable means). Assessments based on acres in production will be more fair and reliable. Some individual assessments will go up, but others will go down. Overall assessments will increase, but there will not be a major financial impact on ginseng producers.

This rule repeals a current marketing order provision that requires an advisory referendum of ginseng producers every 5 years, to determine whether they support continuation of the marketing order. The repeal will save some costs for the marketing board and affected producers. The savings for individual producers will not be significant.

Federal Regulation

The United States Department of Agriculture (USDA) administers an agricultural marketing order program, under which USDA has broad authority to regulate prices and production, as well as to charge assessments for market development, promotion, research and education. USDA has adopted marketing orders for some of the same commodities covered by Wisconsin marketing orders (including potatoes, corn, milk and soybeans). However, the state marketing orders do not directly duplicate or conflict with the federal marketing orders.

Surrounding State Regulation

Surrounding states have marketing orders for some, but not all, of the commodities covered by Wisconsin marketing orders. For example, Illinois, Iowa, Minnesota and Michigan have marketing orders for corn. Illinois and Iowa also have marketing orders for soybeans, milk and other commodities. Nearly all United States ginseng is grown in Wisconsin, so no other states have ginseng marketing orders.

Fiscal Impact

The proposed rules will not have a significant fiscal impact on DATCP and will have no fiscal effect on local government.

Notice of Hearing Employee Trust Funds [CR 07-066]

A public hearing on this proposed rule will be held on **Wednesday, August 1, 2007**, at 9:30 AM in Conference Room GB at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. Persons attending should come to the reception desk up the stairs (or elevator) from the main entrance.

Analysis Prepared by Dept. of Employee Trust Funds

Statute Interpreted: Sections 40.03 (1) (j), (6) (I), (7) (f), (8) (f) and 40.80 (2g), Stats., concerning the hearing authority of the Employee Trust Funds, Group Insurance, Teachers Retirement, Wisconsin Retirement and Deferred Compensation Boards, respectively.

Statutory Authority: Sections 40.03 (2) (i) and 227.11 (2) (a), Stats.

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

Related Statute or Rule: None.

Plain Language Analysis

The purpose of this rule is to allow the five Boards hearing appeals of determinations made by the Department of Employee Trust Funds (DETF) to rely upon hearsay evidence to make factual findings in administrative hearings to the same extent permitted in state court.

The present s. ETF 11.12 (2) (b) prohibits a Board from basing any finding of fact on hearsay. The proposed rule eliminates that absolute prohibition. This change permits the Board hearing the appeal to base its findings of fact upon hearsay when that hearsay is corroborated by other non-hearsay evidence, or in any other circumstances in which Wisconsin courts may determine that reliance upon hearsay evidence is permissible in administrative proceedings. The proposed rule expressly allows the Boards to rely upon hearsay evidence as the basis for their factual findings to the same extent permitted in hearings in Wisconsin courts.

Comparison with Federal Regulations

No existing or proposed federal regulations apply to the evidentiary standards that may be applied by the Boards in hearing administrative appeals of determinations made by the Department of Employee Trust Funds.

Comparison with Rules in Adjacent States

Although there are a number of governmental retirement plans in Illinois, Iowa, Minnesota and Michigan, their administrative rules are not directly relevant to interpreting the Wisconsin statutes governing the Wisconsin Retirement System. Governmental plans differ in the degree to which the terms of the plan are established by enabling legislation or left to subsequent administrative rulemaking or other means.

Illinois. The various governmental retirement systems in Illinois have not adopted administrative rules specifically

concerning hearsay evidence in their administrative proceedings. Other state administrative rules deal with hearsay in different ways. For example:

- The Department of Children and Family Services mandates that previous statements by the child relating to abuse or neglect must be admitted as hearsay exceptions. Ill. Admin. Code tit. 89, §§ 336.120 b) 10) and 412.60 g) 1) B).

- The Illinois Gaming Board permits hearsay to support a finding of the Administrative Law Judge if it is the best evidence available, has sufficient indicia of trustworthiness and reliability and is of the type reasonably and customarily relied on in the gaming industry. See Ill. Admin. Code tit. 86, § 3000.430 a).

- The Department of Central Management Services appeal rules provide that the technical rules of evidence do not apply. Any material evidence, including hearsay, may be accepted, but the finder-of-fact must weigh the hearsay nature of such evidence. See Ill. Admin. Code tit. 14, § 105.60 l) 6).

- In consumer protection hearings by the Attorney General any relevant evidence which is not privileged is admissible, whether or not the evidence is hearsay or would be inadmissible in a court of law. See Ill. Admin. Code tit. 14, § 450.20 b) 3).

- The State Board of Elections permits hearsay evidence to be admitted into evidence if the hearing examiner deems it reliable and trustworthy. See Ill. Admin. Code tit. 26, § 150.115 a).

On the other hand, some administrative rules appear to discourage hearsay evidence with general statements that the common rule against hearsay will be deemed substantive, not merely technical, for hearing purposes. For examples, see Ill. Admin. Code tit. 41, § 123.180 b) [*Office of the State Fire Marshall*], Ill. Admin. Code tit. 56, § 2605.360 b) [*Department of Commerce and Economic Opportunity*] and Ill. Admin. Code tit. 68, § 1110.180 b) [*Department of Financial and Professional Regulation*]. In many cases, however, the agency's rules then go on to recognize exceptions to this exclusion of hearsay evidence. For instance:

- The State Fire Marshal's rules for contested cases involving boiler and other pressure vessels state that hearsay is not admissible — unless the statement is subject to a hearsay exception under Illinois law or has circumstantial guarantees of trustworthiness. The probative value of the hearsay statement must also outweigh any prejudice resulting from an inability to cross-examine the maker of the statement. See Ill. Admin. Code tit. 41, § 123.220 b). The rules also identify the kinds of statements which will not be viewed as hearsay, including certain kinds of prior statements made by the witness and admissions made by the other party. See Ill. Admin. Code tit. 41, § 123.220 c).

- The Department of Commerce and Economic Opportunity, the Department of Financial and Professional Regulation and the Illinois Comptroller have taken similar approaches virtually identical to the State Fire Marshall's. See Ill. Admin. Code tit. 56, § 2605.340 d) and e), Ill. Admin. Code tit. 68, § 1110.220 b) and c) and Ill. Admin. Code tit. 74, § 310.220 b) and c), respectively.

- Language recognizing the hearsay exceptions in Illinois law or circumstantial guarantees of trustworthiness (and of probative value outweighing the prejudice of the inability to cross-examine) is also found in the Department of Children and Family Services rules, although those rules do not contain the list of statements not considered hearsay. See Ill. Admin. Code tit. 89, § 412.60 g) 1) C).

- Under Ill. Admin. Code tit. 56 § 2830.335 c), the Department of Employment Security provides that, in actions pertaining to the re-issuance of benefit checks, hearsay which was not objected to may nevertheless not form the sole basis for a decision, if the claimant testified under oath to the contrary. The sole exception is if the Department's special agent finds that the claimant's testimony is incredible, inconsistent or inherently improbable.

- The Illinois Department of Revenue, in Ill. Admin. Code tit. 86, § 200.155 a), provides that hearsay may not be admitted, except to the extent that it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

Iowa. The only Iowa administrative rules expressly concerning hearsay evidence in administrative proceedings allow findings to be based on hearsay, regardless of whether the evidence would be admissible in a jury trial, if the evidence is of a kind that reasonably prudent persons are accustomed to rely upon for the conduct of their serious affairs. See Iowa Admin. Code r. 193–7.26(7) [*contested cases concerning professional licensing and regulation*], Iowa Admin. Code r. 263–9.10(4)(intro.) [*City Development Board involuntary development actions*], and Iowa Admin. Code r. 721–25.24(7) [*Secretary of State administrative complaints regarding elections*].

Michigan. The State Employee Retirement System does not yet have administrative rules. The Michigan Administrative Code contains no rules relating specifically to hearsay.

Minnesota. The Minnesota governmental retirement systems have not adopted administrative rules specifically concerning hearsay evidence. Other state administrative rules deal with hearsay in a fairly uniform way.

Under Minnesota's Office of Administrative Hearings, the rules governing a variety of different kinds of hearings, including contested cases, allow hearsay evidence with probative value to be admitted into evidence. See Minn. R. 1400.7300 subp. 1., Minn. R. 1400.8601 subp. 1., and Minn. R. 1405.1700 subp. 3. The rules on hearings by other state agencies also permit receiving any evidence, expressly including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. See Minn. R. 3310.2922 [*unemployment compensation procedure*], Minn. R. 3525.4320 [*Dept. of Education disabled children hearings*], Minn. R. 5510.1910 subp. 9 [*Public employment labor relations*], Minn. R. 7897.0170 subp. 3 [*Racing Commission*], Minn. R. 9200.4800 subp. 19 A. [*Environmental quality board*].

The rules of two boards specify that hearsay evidence may be used to supplement or explain direct evidence, but is insufficient to support a finding in itself, unless the hearsay would be admissible over objection in a civil action. See Minn. R. 5601.3145 [*Board of Physical Therapy*] and Minn. R. 5615.0900 subp. 3 [*Board of Medical Practice*].

Summary of Factual Data and Analytical Methodologies

The proposed rule is based on logical analysis of the evidentiary issues that can arise under the administrative appeal process as well as many years of experience with evidence offered in such hearings.

Analysis to Determine Effect on Small Business or in Preparation of Economic Impact Report

This rule-making affects only administrative hearings before the Employee Trust Funds Board and four other Boards attached to the DETF. The parties to such hearings are governmental employees affected by determinations made by

the DETF in administering the pension, insurance and other fringe benefit plans under ch. 40, Stats. their beneficiaries and sometimes the governmental agencies that employ them. Third party administrators contracted by the DETF or Boards to assist in the administration of particular benefit plans may sometimes participate as parties, if they wish. However, such third-party administrators do not now, and have not in the past, met the definition of a "small business" in s. 227.114 (1), Stats.

Anticipated Costs Incurred by Private Sector

None.

Effect on Small Business

No effect

Agency Contact Person

Please direct any questions about the proposed rule to Robert Weber, Chief Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 266-5804. E-mail address: rob.weber@etf.state.wi.us.

Submission of and Deadline for Comments

Written comments on the proposed rule may be submitted to Robert Weber, Department of Employee Trust Funds, 801 W. Badger Road, P.O. Box 7931, Madison, WI 53707-7931. Written comments must be received at the Department of Employee Trust Funds no later than 4:30 PM on Friday, August 10, 2007.

Initial Regulatory Flexibility Analysis

The proposed rule has no effect on small businesses.

Fiscal Estimate

The proposed rule is expected to have no fiscal effect on any county, city, village, town, school district, technical college district or sewerage district. Although such governmental entities may appear as parties in the administrative appeals affected by this rule, they remain free to present their evidence in those administrative appeals in exactly the same manner as at present. It is possible that the rule will enable some limited savings if evidence can be presented in the form of corroborated, or otherwise reliable, hearsay rather than through, for example, expert testimony.

Free Copies of Proposed Rule

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

Notice of Hearing

Funeral Directors Examining Board

[CR 07-049]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Funeral Directors Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 445.03, Stats., and interpreting s. 445.06, Stats., the Funeral Directors Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. FD 4.04 (1) (intro.); and to create s. FD 4.04 (8), relating to continuing education requirements.

Hearing Date, Time and Location

Date: **August 7, 2007**
 Time: 9:45 a.m.
 Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson Street)
 Room 121A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by August 8, 2007, to be included in the record of rule-making proceedings.

Analysis Prepared by Dept. of Regulation and Licensing

Statutes Interpreted: Section 445.06, Stats.

Statutory Authority: Sections 15.08 (5) (b), 227.11 (2) and 445.03, Stats.

Related Statute or Rule: There are no other statutes or rules other than those listed above.

Explanation of Agency Authority: The Funeral Directors Examining Board is authorized to promulgate rules relating to continuing education under s. 445.03, Stats.

Plain Language Analysis

This proposed rule-making order relates to continuing education requirements for funeral directors. Licensed funeral directors are required to complete 15 hours of continuing education during each 2-year licensure period. The modifications to the existing continuing education rules will enable funeral directors to take a wider selection of courses from certain recognized providers without also having to go through the course approval process.

SECTION 1 adds an exception to the existing continuing education rules for licensed funeral directors which will permit licensees to obtain continuing education credits from certain recognized entities.

SECTION 2 adds another acceptable means for obtaining continuing education. Under this provision, funeral directors may take continuing education courses from one of these recognized providers without having to go through the formal course approval process.

Comparison with Federal Regulations

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

Comparison with Rules in Adjacent States

Illinois: Twelve hours of continuing education are required every two years. Attendance at programs that are sponsored by accredited colleges or universities and several local, state, and national associations and meet certain criteria is acceptable continuing education by rule and does not need preapproval. Sponsors are required to fill out an application that states that they are meeting all required criteria. Rules can be viewed by going to the Illinois Department of Financial & Professional Regulation Division of Professional Regulation at <http://www.idfpr.com/dpr/default.asp>, click on Funeral Director and then Funeral Director Rules.

Michigan: Continuing education is not required in Michigan. Rules can be viewed by going to the Department

of Labor & Economic Growth at <http://www.michigan.gov/cis>, click on Commercial Services & Corporations and then Licensing Services, followed by Funeral Directors, then Administrative Rules.

Minnesota: Twelve hours of continuing education are required every two years. Rules specifically state that the “commissioner may, upon presentation of an appropriate program of continuing education developed by the Minnesota Funeral Directors Association, require continuing education hours for renewal of a license to practice mortuary science.” Rules can be viewed by going to the Minnesota Department of Public Health Mortuary Science Section at <http://www.health.state.mn.us/divs/hpsc/mortsci/>, click on Regulations.

Iowa: Twenty–four hours of continuing education are required every two years. Attendance at programs that are sponsored by state or national funeral associations that meets certain criteria is acceptable continuing education by rule and does not need preapproval. Rules can be viewed by going to the Iowa Department of Public Health at <http://idph.state.ia.us/licensure/default.asp>, click on Mortuary Science Board and then Continuing Education.

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 board’s analysis and determination that a rule change is necessary.

Analysis to Determine Effect on Small Business or in Preparation of Economic Impact Report

The proposed rules would allow certain continuing education course providers to receive pre–approval from the board rather than have to submit each course for approval. There are 1313 funeral directors licensed in Wisconsin. Of the 1313 funeral directors, a significant percentage of them probably work in small business. This rule change will have a minimal, if any, effect on small business. The proposed rules would make it easier for certain providers to obtain approval for continuing education. Also, it may make it more likely that a course will receive board approval and a licensee will receive their continuing education credit as some providers will no longer have to affirmatively submit their course for approval.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule–making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated Costs for 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.

Effect on Small Business

These proposed rules will have no significant economic impact on 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.

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.

Submission of and Deadline for Comments

Comments may be submitted 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 August 8, 2007 to be included in the record of rule–making proceedings.

Text of Rule

SECTION 1. FD 4.04 (1) (intro.) is amended to read:

FD 4.04 Approval of continuing education programs. (1) (intro.) ~~To~~ Except as provided in sub. (8). to obtain approval of a continuing education program, the program provider shall submit an application to the board on a form provided by the board which shall include:

SECTION 2. FD 4.04 (8) is created to read:

FD 4.04 (8) A continuing education course sponsored by a national, international, state or regional funeral director’s association, or an educational institution accredited by the American Board of Funeral Service Education or otherwise deemed to be equivalent by the board, which satisfies the criteria established in sub. (1) and s. FD 4.405, shall be approved by the board without receipt of a course approval application from the program provider.

Notice of Hearings

Natural Resources

(Environmental Protection – General, Chs. NR 100—)

(Reprinted and amended from 6/30/07 Wis. Adm. Register)

NOTICE IS HEREBY GIVEN that pursuant to ss. 59.692, 227.11(2)(a) and 281.31, Stats., interpreting ss. 59.69, 59.692, 59.694 and 281.31, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 115, Wis. Adm. Code, relating to minimum standards for county shoreland zoning ordinances. Major provisions of the proposed rule include changes to vegetation management in the primary shoreland buffer and changes to regulation of nonconforming structures. New requirements include minimum lot size and density requirements for multi–unit residential development, mobile home parks and campgrounds; two formulas to calculate reduced shoreland setbacks; an impervious surface standard; and mitigation standards. The proposals include:

Land Division Review – NR 115.09

1. The requirement for land division review is changed from the creation of “3 or more lots” to the creation of “one or more lots” to ensure that all new lots created meet minimum lot size requirements.

2. If new lots are created that are divided by a stream or river, one side of the lot shall have a compliant building location.

Lot Size and Development Density – NR 115.11

1. Minimum lot size and density standards have changed eliminating a distinction between sewered and unsewered areas. The new minimum lot size for all lots created after the effective date of the rule is 20,000 square feet and 100 feet of width at the building setback and ordinary high water mark. Counties may allow development on a substandard lot.

2. Counties are required to develop minimum area or lot size requirements for multi-family residential structures, mobile home parks and campgrounds.

3. Counties may request the approval of standards for alternative forms of development with reduced lot sizes for planned unit developments, cluster developments, conservation subdivisions and other similar alternative forms of development if they include larger shoreland buffers, larger lot sizes or larger setbacks on those lots adjacent to the water.

Shoreland Setback – NR 115.13

1. Language is added to address structures exempted by other state or federal laws from the shoreland setback standards.

2. Provisions are added to allow counties to exempt structures from the shoreland setback if they meet certain requirements outlined in s. NR 115.13(4).

3. The construction of new dry boathouses is still exempted; however, a size limit of 250 square feet has been added to the rule.

4. Standards are established to qualify a lot for a reduced setback if there is not a compliant building location.

Height Requirements – NR 115.15

1. A new section on structure height was added to protect and preserve the natural scenic beauty of lake and riverine environments.

Shoreland Vegetation and Buffers – NR 115.17

1. Language governing management of shoreland vegetation in the primary shoreland buffer is improved, resulting in a more functional buffer protecting habitat and water quality.

2. Tree and shrubbery pruning is allowed. Removal of trees and shrubs may be allowed if they are exotic or invasive species, diseased or damaged, or if an imminent safety hazard, but removed trees and shrubbery must be replaced.

3. Provisions are added to allow counties to exempt 7 types of activities from the shoreland vegetation provisions.

4. A formula for the width of access corridors is provided, replacing the “30 feet in any 100 feet” provision, which was confusing if a lot had less than 100 feet of frontage. A second formula for lots with greater than 200 feet of frontage was also added to address larger developments adjacent to the water.

Impervious Surfaces – NR 115.19

1. Development is regulated through the use of percentages of total impervious surface rather than through the use of a nonconforming structure provision. The impervious surface percentages of 10% for new principal structures or 15% for existing development may be exceeded up to a maximum of 20% total impervious surface within 300 feet of the ordinary high water mark if mitigation measures are implemented and maintained.

2. Provisions are also included for shared impervious surfaces, expansion, enclosing existing impervious surfaces, replacements and relocation.

Mitigation Provisions – NR 115.21

1. Provisions are now a performance measure to protect, preserve and enhance water quality and wildlife habitat while achieving natural scenic beauty.

2. There is a water quality standard and a wildlife standard that the counties will have to flesh out in their individual ordinances. The water quality standard will require infiltration of runoff.

3. A provision on proportionality has been added to ensure the mitigation measures required will not outweigh the impacts of the proposed project.

Land Disturbing Construction Activities – NR 115.23

1. A county permit is required for land disturbing construction activities in the shoreland zone to minimize erosion and sedimentation.

2. Counties shall exempt from the permit requirement activities that have already received permits from other identified permitting authorities.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code, the Department has prepared an Environmental Assessment for this action. The Department has made a preliminary determination that the proposal will not cause significant adverse environmental effects and that an Environmental Impact Statement will not be required.

NOTICE IS HEREBY FURTHER GIVEN that the Department will hold an open house from 4:30 p.m. to 5:30 p.m. prior to each hearing. Department staff will be available to answer questions regarding the proposed rules.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

July 24, 2007 Tuesday at 5:45 p.m.	Auditorium Health & Science Bldg. North Central Tech. College 1000 W. Campus Drive Wausau
July 25, 2007 Wednesday at 5:45 p.m.	Auditorium Rhinelander High School 665 Coolidge Avenue Rhinelander
July 26, 2007 Thursday at 5:45 p.m.	Blue Hills Masonic Center 225 West South Street Rice Lake
July 31, 2007 Tuesday at 5:45 p.m.	Community Room Farmers & Merchants Bank 1001 Superior Avenue Tomah
August 2, 2007 Thursday at 5:45 p.m.	Neville Museum Theater 210 Museum Place Green Bay
August 7, 2007 Tuesday at 5:45 p.m.	Anderson Education Center Waukesha Co. Tech. College 800 Main Street Pewaukee
August 8, 2007 Wednesday at 5:45 p.m.	Opera House 381 E. Main Street Stoughton

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Toni Herkert at (608) 266-0161 with specific information on your request at least 10 days before the date of the scheduled hearing.

Submission of Comments and Copy of Rule

The proposed rule, fiscal estimate and Environmental Assessment may be reviewed and comments electronically submitted at either of the following Internet sites: <http://dnr.wi.gov/org/water/wm/dsfm/shore/news.htm> or <http://adminrules.wisconsin.gov>. Written comments on the proposed rule and Environmental Assessment may be submitted via U.S. mail to Toni Herkert, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 7, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule, fiscal estimate and Environmental Assessment may be obtained from Ms. Herkert.

Notice of Hearing Transportation [CR 07–065]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.13, 227.11, 345.28 and 345.47 (1) (d), Stats., and interpreting ss. 85.13, 341.08 (4m), 341.10 (7) and (7m), 341.63, 341.64, 345.17, 345.28 and 345.47 (1) (d), Stats., and ch. 342, Stats., the Department of Transportation will hold a public hearing in Room 144–B of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **7th day of August, 2007, at 9:30 AM**, to consider the amendment of ch. Trans 128, Wis. Adm. Code, relating to the traffic violation and registration program.

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

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

Analysis Prepared by the Dept. of Transportation

Statutes Interpreted: ss. 85.13, 341.08(4m), 341.10(7) and (7m), 341.63, 341.64, 345.17, 345.28 and 345.47(1)(d), Stats., and ch. 342, Stats.

Statutory Authority: ss. 85.13, 227.11, 345.28 and 345.47(1)(d), Stats.

Explanation of Agency Authority: The Department is charged with responsibility for suspending or refusing registration of vehicles for failure to pay various debts related to unpaid judgments, parking citations or towing and storage charges associated with parking citations. This chapter implements those requirements.

Related Statute or Rule: ss. 85.13, 341.08 (4m), 341.10 (7) and (7m), 341.63, 341.64, 345.17, 345.28 and 345.47 (1) (d), Stats., and chs. 341 and 342, Stats.

Plain Language Analysis

This proposed rule makes the following changes to current rule regarding the Traffic Violations Registration Program (TVRP): First, it adds towing and storage charges as eligible for TVRP action, as enacted in 2003 Act 201. Second, it adds provisions to accommodate electronic submission of notices that suspending authorities submit to the Department of Transportation, as well as manual or paper submission of notices. Third, the rule includes language to clarify the effect of bankruptcy on vehicle registration suspensions, to comport with federal and state law. The remainder of the rule making consists of re-organizing existing provisions into more readable and understandable format, elaborating on current

policies for added clarity, and adding definitions that may be needed.

Comparison with Federal Regulation

No federal regulations require, encourage or discuss registration suspension or refusal for unpaid debts such as judgments, citations, or towing and storage charges.

Comparison with Rules in Adjacent States

Michigan: Michigan will sanction a person's driver's license for unpaid tickets rather than vehicle registration. If a person accumulates 6 or more parking tickets or 2 or more disabled parking tickets, the person is prevented from renewing his or her driver's license. Parking tickets only are included, not towing and storage charges. Information is submitted to DMV by the courts electronically. Some smaller jurisdictions may submit paper.

Minnesota: Minnesota will suspend the driver's licenses when the counties notify DMV. If there is an unpaid judgment, it could include unpaid towing/storage charges, but the parking citations do not. Information is submitted electronically from the counties to DMV.

Illinois: Illinois will suspend the person's driver's license, if the person accumulates 10 or more parking citations. The city determines the amount of the payment, so it may or may not include towing and storage charges. Information is sent to DMV in paper form.

Iowa: Iowa will suspend the person's driver's license, if parking ticket (and subsequent charges from towing) are not paid; all charges would have to be paid before the suspension is lifted. Most parking authorities submit information electronically.

Summary of Factual Data and Analytical Methodologies

The regulatory approach in this proposed rule reflects no change from current regulatory approach governing the TVRP administration. No data analysis was required.

Analysis to Determine Effect on Small Businesses

The statutory provisions upon which this rule is based apply to governmental units, not to small businesses. Thus, this rule does not apply to small businesses.

Effect on Small Business

This rule affects governmental units, authorized by law to enforce non-moving traffic violations. The rule has no effect on small business, with the exception of any small business that might engage by contract with a governmental unit to process non-moving traffic violation notices to the Department. In that case, the business would be bound by its contract with the governmental unit. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438–4585.

Fiscal Effect and Anticipated Costs by Private Sector

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

This rule also has no effect on costs incurred by the private sector.

Agency Contact Person and Submission of Comments

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at

the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or e-mail: carson.frazier@dot.state.wi.us.

Copy of Rule on Internet

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

Notice of Hearing Transportation [CR 07-064]

NOTICE IS HEREBY GIVEN that pursuant to s. 227.11, Stats., and interpreting ss. 19.35, 85.105, 341.17, 342.09 and 343.24, Stats., the Department of Transportation will hold a public hearing in Room 144-B of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **2nd day of August, 2007, at 10:30 AM**, to consider the amendment of ch. Trans 195, Wis. Adm. Code, relating to fees and procedures for searches and documentation of division of motor vehicle records.

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

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

Analysis Prepared by the Dept. of Transportation

Statutes Interpreted: ss. 19.35, 85.105, 341.17, 342.09 and 343.24, Stats.

Statutory Authority: s. 227.11, Stats.

Explanation of Agency Authority: This is addressed in the next section, related statute or rule.

Related Statute or Rule

DMV may charge reasonable copy and search fees. These fees may not exceed DMV's actual, necessary and direct costs. Wis. Stat. s. 19.35(3). DMV is currently authorized to charge a search fee for driver and vehicle title and registration records. DMV can charge \$5 for conducting a file search of vehicle registration records. Wis. Stat. s. 341.17(8) and ss. Trans 195.04 and 195.09. DMV can charge \$5 for conducting a file search of vehicle title records. Wis. Stat. s. 342.09(3) and ss. Trans 195.04 and 195.09. DMV can charge \$5 for conducting a file search of vehicle operator records. Wis. Stat. s. 343.24(2) and (2m). DMV shall charge a copy fee of \$5 for each file of uniform traffic citations or motor vehicle accidents. Wis. Stat. s. 343.24(2m). The Wisconsin Supreme Court has ruled that custodians can charge requesters for the cost of separating confidential from public information (redaction). Osborn v. Board of Regents, 2002 WI 83, 254 Wis. 2d 266, 299-305 (2002).

DMV may contract with businesses to periodically provide information in an electronic medium from motor vehicle accidents and uniform traffic citations. Wis. Stat. ss. 85.105 and 343.24(2m).

The Federal Drivers' Privacy Protection Act 18 U.S.C. sections 2721-2725 prohibits motor vehicle departments from disclosing personal information about any individual derived from motor vehicle records. 18 U.S.C. section 2721(a).

Information in motor vehicle and driver records protected from disclosure under Wisconsin law includes:

Medical records, Wis. Stat. s. 343.16(5)

Juvenile records, Wis. Stat. ss. 343.24 (3), 343.30 (5) and (6), 938.396 (3)

Driver license photograph, Wis. Stat. s. 343.237 (2)

Identification card information, Wis. Stat. s. 343.50 (8)

Fingerprints, Wis. Stat. s. 343.237 (2)

Signatures, Wis. Stat. s. 343.027

DMV may not disclose personal identifiers relating to driver licenses and identification cards in requests for 10 or more persons, if a person requests that this information not be disclosed. Personal identifiers may be disclosed to a law enforcement agency, state authority, or federal government agency to perform a legally authorized function; or to an insurer for insurance purposes. Wis. Stat. ss. 85.103, 343.14(2m), 343.235 and 343.51(1m).

DMV may not disclose personal identifiers relating to vehicle registrations in requests for 10 or more persons, if a person requests that this information not be disclosed. Personal identifiers may be disclosed to a law enforcement agency, state authority, or federal government agency to perform a legally authorized function; or to an insurer for insurance purposes. Wis. Stat. ss. 85.103, 341.08(1m), and 341.17(9).

DMV may not disclose personal identifiers relating to vehicle titles in requests for 10 or more persons, if a person requests that this information not be disclosed. Personal identifiers may be disclosed to a law enforcement agency, state authority, or federal government agency to perform a legally authorized function; or to an insurer for insurance purposes. Wis. Stat. ss. 85.103, 342.06(1)(i) and 341.17(9).

Section ADM 12.05(3) requires agencies to restrict and limit access to confidential records maintained in an electronic format.

Plain Language Analysis

Ch. Trans 195 establishes fees for searches of vehicle and driver records. The provisions cover both single (individual) driver and vehicle records, and also large volumes of data that include many records, of multiple drivers or vehicles.

The amendment defines "records in bulk" to refer to more than 10 individual vehicle or driver records that are provided at one time, and distinguishes records in bulk from individual vehicle or driver license records. The amendment defines several terms relating to personal information that may not be disclosed under federal law or provisions of state law, and defines "redaction" as separating that personal information from records.

The amendment clarifies the procedure for a request to search vehicle and driver license records, eliminating obsolete, contradictory, and redundant provisions. The amendment clarifies what the fee is for search of individual vehicle or driver record, as distinct from the fee for records in bulk, which is a compilation of multiple individual records. The amendment establishes the fee for redaction or records.

The amendment adds a provision to reflect current technological ability to offer direct access to vehicle and driver license records. The provision allows DOT to provide direct access to vehicle and driver license records, under a contract developed by DOT. With certain exceptions, any person who enters such a contract must obtain a criminal history background check for any person who will have direct access to vehicle or driver license records.

Comparison with Federal Regulation

The federal Drivers Privacy Protection Act governs all State DMVs' authority to release certain personal information. This rule complies with DPPA.

Comparison with Rules in the Following States

Michigan: Michigan charges for individual record search \$7; and \$16/1,000 for records in bulk that are routinely generated, and \$64/1000 that are custom–prepared. Charge is based on preparation plus market–based price. Michigan has statutory authority to sell records.

Minnesota: Minnesota charges for individual record search \$9 if provided in paper and \$5 if electronic; and \$5,000 plus \$850 weekly for records in bulk routinely generated. Charge is based on a reasonable fee in addition to costs of preparation. Minnesota has statutory authority to sell records.

Illinois: Illinois charges for individual record search \$5 per record; and \$50/1,000 for records in bulk that are routinely generated. Charge is based on costs of preparation or \$50/1000, whichever is greater. Illinois has statutory authority to sell records.

Iowa: Iowa charges for individual driver record for \$5.50 if provided in certified (paper) and \$8.50 if electronic, and fee based on staff time and copy cost for vehicle records; and \$12.09 per computer minute for certain records in bulk or \$8.50 per record for certain other records in bulk. Iowa has statutory authority to sell records.

Summary of Factual Data and Analytical Methodologies

This rule making clarifies current DMV policies. No new regulatory approach is created.

Analysis to Determine Effect on Small Businesses

This amendment clarifies current DMV policies on fee calculation, and current contract requirement for any person who enters a contract with DOT for direct access to vehicle or driver license records. Fees are not changed by this rule making. A redaction fee would seldom be needed for record requests made by small businesses.

Effect on Small Business

This amendment will have minimal increased cost on small business. The rule requires that a business obtain a criminal background check from the Wisconsin Department of Justice for all persons who will have direct access to vehicle or driver license records. The Department of Justice currently charges a fee of \$13 (request by internet) or \$18 (request by mail or fax) for each criminal background check. For example, if a small business has 25 employees and 10 of those employees are proposed to have direct access to vehicle or driver license records, the small business would need to pay the Department of Justice up to \$180 for criminal background checks. The Department's Regulatory Review Coordinator may be contacted by e–mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438–4585.

Fiscal Effect

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

Anticipated Costs Incurred by Private Sector

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

Agency Contact Person and Submission of Comments

The public record on this proposed rule making will be held open until close of business the day of the hearing, to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707–7911. You may also contact Ms. Frazier by phone at (608) 266–7857 or e–mail: carson.frazier@dot.state.wi.us.

Copy of Rule on Internet

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

Notice of Hearing Veterinary Examining Board [CR 07–051]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Veterinary Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 453.03, Stats., and interpreting ss. 453.062 and 453.07, Stats., the Veterinary Examining Board will hold a public hearing at the time and place indicated below to consider an order to renumber s. VE 1.02 (1); and to create ss. VE 1.02 (1), 7.01 (5), 7.025, 7.03 (2) (q) and (3) (k), 7.06 (23) and 10.03 (4) (g), relating to continuing education, informed consent and recordkeeping.

Hearing Date, Time and Location

Date: **August 8, 2007**
Time: 10:00 a.m.
Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 121A
Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by August 10, 2007, to be included in the record of rule–making proceedings.

Analysis Prepared by Dept. of Regulation and Licensing

Statute Interpreted: Sections 453.062 and 453.07, Stats.

Statutory Authority: Sections 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

Related Statute or Rule: There are no other related statutes or rules other than those listed above.

Explanation of Agency Authority: The Veterinary Examining Board is authorized under s. 453.03 (1), Stats., to promulgate rules establishing the scope of practice permitted for veterinarians and rules relating to continuing education and unprofessional conduct.

Plain Language Analysis

SECTION 1. Section VE 1.02 is renumbered VE 1.02 (1e).

SECTION 2. Section VE 1.02 (1) is created to define “accredited college or university.” The proposed rule clarifies

that only coursework completed at educational institutions that are accredited by a regional or national accrediting agency recognized by the U.S. Department of Education will be acceptable for continuing education hours.

SECTION 3. Section VE 7.01 (5) is created to define “viable veterinary diagnostic procedures and modes of treatment.” The proposed rule clarifies that viable veterinary diagnostic procedures and modes of treatment are those that are generally considered by the veterinary profession to be within the scope of current, acceptable standards of care.

SECTION 4. Section VE 7.025 is created to require, with some exceptions, veterinarians to disclose all viable veterinary diagnostic procedures and modes of treatment to clients.

SECTION 5. Section VE 7.03 (2) (g) is created to state that veterinarians are required to document in patient records communications of information provided to clients relating to all viable veterinary diagnostic procedures and modes of treatment.

SECTION 6. Section VE 7.03 (3) (k) is created to state that veterinarians are required to document in patient records communications of information provided to clients relating to all viable veterinary diagnostic procedures and modes of treatment.

SECTION 7. Section VE 7.06 (23) is created to state that it shall be unprofessional conduct for a veterinarian to fail to inform a client about the availability of all viable veterinary diagnostic procedures and modes of treatment and about the benefits and risks of each, as required under s. VE 7.025.

SECTION 8. Section VE 10.03 (4) (g) is created to clarify that a foreign veterinary medical or veterinary technician association, an accredited college or university, or a governmental agency that is, as determined by the board, comparable to a program provider listed under s. VE 10.03 (4) (a) to (f), may be approved as a continuing education course provider.

Comparison with Federal Regulation

There is no existing or proposed federal regulation.

Comparison with Rules in Adjacent States

Minnesota: A rule on record keeping includes a list of what must be recorded. A rule on informed consent requires a client to be informed of treatment choices and alternatives, including an estimated cost of alternatives, prior to treatment. There is also language about the veterinarian assuming responsibility for clinical judgments and caretakers agreeing to follow the veterinarian’s instructions.

Illinois: The statute includes language about the veterinarian assuming responsibility for clinical judgments and caretakers agreeing to follow the veterinarian’s instructions. This provision is similar to Minnesota’s law. A rule on recordkeeping includes a list of 10 items that must be included. Informed consent is one of them.

Iowa: Does not have provisions relating to informed consent/disclosure of certain information to clients regarding treatment options.

Michigan: Does not have provisions relating to informed consent/disclosure of certain information to clients regarding treatment options.

Summary of Factual Data and Analytical Methodologies

The Veterinary Examining Board reviewed the proposed rule change during open session at its meetings in 2006 and 2007. Professional expertise and opinions of board members were offered and discussed at the meetings. The chair of the board invited comment from a representative of the

Wisconsin Veterinary Medical Association (WVMA), and the board consulted the Department of Regulation and Licensing’s Division of Enforcement regarding the impact of the current rule on its ability to prosecute unprofessional practice cases relating to informed consent and recordkeeping. The division attorney explained how the current rule does not adequately ensure that clients receive communication from veterinarians regarding viable treatment alternatives, their risks and benefits, and that explicit language would aid in prosecutions and increase protection of the public.

Analysis to Determine Effect on Small Business or in Preparation of Economic Impact Report

The requirement has no impact on the bookkeeping operations of veterinary clinics, most of which are small businesses. The proposed rule would not disproportionately impact small business veterinarians. The patient recordkeeping requirements for all veterinarians apply irrespective of practice size.

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.

Fiscal Estimate

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

Anticipated Costs for Private Sector

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

Effect on Small Business

These proposed rules were reviewed by the department’s Small Business Review Advisory Committee to determine whether the rules will have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Committee determined that the fiscal impact on small businesses would be minimal and is justified by the practice improvements required by the rule. The Department’s Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

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.

Submission of and Deadline for Comments

Comments may be submitted 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 August 10, 2007 to be included in the record of rule-making proceedings.

Text of Rule

SECTION 1. VE 1.02 (1) is renumbered VE 1.02 (1e).

SECTION 2. VE 1.02 (1) is created to read:

VE 1.02 (1) “Accredited college or university” means an educational institution that is accredited by a regional or national accrediting agency recognized by the U.S. Department of Education.

SECTION 3. VE 7.01 (5) is created to read:

VE 7.01 (5) “Viable veterinary diagnostic procedures and modes of treatment” means diagnostic procedures and modes of treatment generally considered by the veterinary profession to be within the scope of current, acceptable standards of care.

SECTION 4. VE 7.025 is created to read:

VE 7.025 Disclosure of all viable veterinary diagnostic procedures and modes of treatment. (1) Except as provided in sub. (2), a veterinarian shall inform a client about the availability of all viable veterinary diagnostic procedures and modes of treatment, including the benefits and risks of each, in a manner sufficient to allow the client to make a prudent decision.

(2) A veterinarian is not required to inform a client about the availability of all viable veterinary diagnostic procedures and modes of treatment, or about the benefits and risks of each, in any of the following instances:

(a) When the communication would involve providing detailed technical information relating to procedures that are inherent to a particular diagnostic procedure or mode of treatment.

(b) When the communication would involve providing information relating to diagnostic procedures or modes of treatment which are not viable or which are experimental.

(c) When a veterinarian refers a patient to another veterinarian, the referring veterinarian is not required to inform the client of all viable veterinary diagnostic procedures or modes of treatment that may be provided by the veterinarian to whom the patient is being referred.

(d) When the communication would involve providing information relating to diagnostic procedures or modes of treatment which involve extremely remote possibilities that might falsely or detrimentally alarm the client.

(e) When the communication would involve providing information beyond what a reasonably well-qualified veterinarian treating the same condition would know.

(f) When the client cannot be located.

(g) When the client informs the veterinarian that he or she is not interested in receiving information regarding all viable veterinary diagnostic procedures and modes of treatment.

(h) In emergencies, when failure to provide treatment, including any necessary diagnostic tests relating to that treatment, to stabilize the patient would be detrimental to the patient’s health.

SECTION 5. VE 7.03 (2) (q) is created to read:

VE 7.03 (2) (q) Communications of information provided to clients relating to all viable veterinary diagnostic procedures and modes of treatment.

SECTION 6. VE 7.03 (3) (k) is created to read:

VE 7.03 (3) (k) Communications of information provided to clients relating to all viable veterinary diagnostic procedures and modes of treatment.

SECTION 7. VE 7.06 (23) is created to read:

VE 7.06 (23) Failure to inform a client about the availability of all viable veterinary diagnostic procedures and modes of treatment, or about the benefits and risks of each, as required under s. VE 7.025.

SECTION 8. VE 10.03 (4) (g) is created to read:

VE 10.03 (4) (g) A foreign veterinary medical or veterinary technician association, an accredited college or university, or a governmental agency that is, as determined by the board, comparable to a program provider listed under pars. (a) to (f).

Submittal of Proposed Rules to the Legislature

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

Health and Family Services

(CR 07-053)

Ch. HFS 119, relating to Health Insurance Risk-Sharing Plan.

Insurance

(CR 07-023)

Ch. Ins 50, relating to annual audited financial reports, annual financial statements and examinations.

Public Service Commission

(CR 07-020)

Ch. PSC 133, relating to the construction, installation, and placing in operation of natural gas facilities.

Public Service Commission

(CR 07-021)

Ch. PSC 114, relating to the Wisconsin State Electrical Code, Volume 1.

Workforce Development

(CR 07-018)

Ch. DWD 301, relating to migrant labor.

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 07-007)

An order affecting chs. Comm 5 and 20, relating to dwelling contractor certification.
Effective 9-1-07 and 1/1/08.

Health and Family Services (CR 07-028)

An order affecting ch. HFS 51, relating to pre-adoption training for adoptive parents.
Effective 8-1-07.

Natural Resources (CR 06-104)

An order creating ch. NR 432, relating to provisions for major electric generating units to comply with the Clean Air Interstate Rule (CAIR) promulgated by the U.S. Environmental Protection Agency.
Effective 8-1-07

Natural Resources (CR 06-121)

An order affecting ch. NR 820, relating to annual reporting of groundwater pumping from high capacity wells, designation of groundwater management areas, environmental review of high capacity well applications for impacts on groundwater protection areas and springs and evaluation of wells with greater than 95% water loss.
Effective 9-1-07.

Natural Resources (CR 06-132)

An order affecting ch. NR 5, relating to mandatory

boating education, temporary certifications and course fees.
Effective 9-1-07.

Natural Resources (CR 06-133)

An order affecting ch. NR 5, relating to registration of boats used exclusively to make advertisements and creating definitions.
Effective 9-1-07.

Natural Resources (CR 06-134)

An order affecting ch. NR 19, relating to establishing specialized fees for Internet based ATV and snowmobile safety certification programs.
Effective 9-1-07.

Regulation and Licensing (CR 06-125)

An order affecting chs. RL 4 and 174 to 177, relating to registration of sanitarians.
Effective 8-1-07.

Transportation (CR 06-103)

An order affecting ch. Trans 200, relating to specific information signs.
Effective 8-1-07.

Workforce Development (CR 06-032)

An order affecting ch. DWD 133, relating to unemployment insurance and temporary help employers.
Effective 8-1-07.

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