

# Wisconsin Administrative Register

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## Emergency Rules Now in Effect

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*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](http://www.legis.state.wi.us/rsb/code).*

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

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### Agriculture, Trade & Consumer Protection (2)

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

#### Finding of Emergency

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

#### Disease Testing of Fish

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

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

farms. VHS can be fatal to fish, but is not known to affect human beings.

(4) Current DATCP rules require health certificates for fish and fish eggs (*including bait*) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish and fish eggs (including bait species) moved between fish farms in this state. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources, for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between fish farms in Wisconsin, or for non–salmonids imported from states where VHS has not yet been found.

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

#### Disease–Free Herd Certification of Farm–Raised Deer Herds

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

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

**Publication Date: October 31, 2007**

**Effective Date: October 31, 2007**

**Expiration Date: March 29, 2008**

**Hearing Date: January 14, 2008**

**Extension Through: May 31, 2008**

2. **EmR0804** – Creating **subch. IV of ch. ATCP 161**, relating to the “buy local” grant program created under s. 93.48, Stats.

#### Exemption From Finding of Emergency

DATCP has general authority under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. Section 93.48 (1), Stats., specifically requires DATCP to adopt rules for the “buy local” grant program. Section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act) authorizes DATCP to adopt temporary emergency rules without the normal “finding of emergency,” pending the adoption of “permanent” rules. This temporary emergency rule implements the “buy local” grant program on an interim basis, pending the adoption of “permanent” rules.

**Publication Date:** February 22, 2008  
**Effective Date:** February 22, 2008  
**Expiration Date:** May 1, 2009  
**Hearing Date:** May 30, 2008

## Commerce

### *Licenses, Certifications, etc., Ch. Comm 5*

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

#### Exemption From Finding of Emergency

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

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

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

## Commerce

### *Financial Resources for Businesses and Communities, Chs. Comm 104–135*

**EmR0802** – Creating **ch. Comm 132**, relating to implementing a program for certifying applicants and allocating dairy manufacturing facility investment tax credits, and affecting small businesses.

#### Finding of Emergency

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

The facts constituting the emergency are as follows. Under sections 71.07 (3p) (b), 71.28 (3p) (b), and 71.47 (3p) (b) of the Statutes, as created in 2007 Wisconsin Act 20, a taxpayer may claim a dairy manufacturing facility investment credit for dairy manufacturing modernization or expansion during taxable years beginning after December 31, 2006. Sections 71.07 (3p) (a) 3., 71.28 (3p) (a) 3., and 71.47 (3p) (a) 3. of the Statutes define dairy manufacturing modernization or expansion as “constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for dairy manufacturing . . . if acquired and placed in service in this state during taxable years that begin after December 31, 2006, and before January 1, 2015.” Section 71.07 (3p) (c) 2m. a. of the

Statutes states that the maximum amount of credits that may be claimed in fiscal year 2007–08 is \$600,000.

Section 560.207 of the Statutes, as likewise created in 2007 Wisconsin Act 20, requires the Department to (1) implement a program for certifying taxpayers as eligible for the dairy manufacturing facility investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in consultation with the Department of Revenue, promulgate rules to administer the program. No other provisions are established in the Statutes regarding the specific process for taxpayers to use in applying for the credits, and for the Department of Commerce to use in certifying eligible taxpayers and in allocating the credits.

Because of enactment of 2007 Wisconsin Act 20, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been incurred during taxable years that began after December 31, 2006.

Entities that may be eligible for the tax credits for the 2007–08 fiscal year face near-term time constraints for filing their tax returns with the Department of Revenue. Although the Department of Commerce has begun promulgating the permanent rule that is required by 2007 Act 20, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to readily accommodate claiming the tax credits for the 2007–08 fiscal year. This emergency rule will enable the Department of Commerce to establish an application, certification, and tax credit allocation process for the entities that need to soon file their tax returns for taxable years beginning after December 31, 2006.

**Publication Date:** February 4, 2008  
**Effective Date:** February 4, 2008  
**Expiration Date:** July 3, 2008  
**Hearing Date:** May 14, 2008

## Employment Relations Commission

Rule adopted amending **s. ERC 10.08 (1), (2), (3), (4), and (5)**, relating to increased filing fees.

#### Finding of Emergency

The Employment Relations Commission finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

1. The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.

2. 2003 Wisconsin Act 33 eliminated \$400,000 in General Program Revenue (GPR) and 4.0 GPR supported positions from the Commission’s 2003–2005 budget and increased the number of Program Revenue (PR) filing fee supported positions by 2.0, from 3.0 to 5.0. The same legislation also abolished the Personnel Commission and transferred certain of that agency’s former responsibilities to the Employment Relations Commission, without additional staff or funding.

3. The 2005–07 budget maintained the same reduced GPR funding and position levels and the additional PR positions as authorized in 2003 Wisconsin Act 33. The Governor’s proposed budget for 2007–09 maintains the same number of GPR and PR funded positions as the previous two budgets.



4. In order to support the 5.0 PR positions provided in the state budgets since 2003, the Employment Relations Commission doubled its filing fees in August, 2003. Despite that increase, filing fee income has averaged \$381,359 over the past four fiscal years, an amount that was approximately \$130,350 less each year than the average budget-authorized PR position expenditures for those same years. As a result the Commission's PR fund balance has been reduced to a level that is wholly insufficient to meet current PR expenditures.

5. Unless the emergency rule making procedures of s. 227.24, Stats., are utilized by the Employment Relations Commission to provide the increased filing fee revenue needed to support the 5.0 positions provided in the PR portion of the Commission's budget, the Commission's ability to provide timely and expeditious dispute resolution services will be significantly harmed.

**Publication Date:** December 19, 2007  
**Effective Date:** January 2, 2008  
**Expiration Date:** May 17, 2008  
**Hearing Date:** November 12, 2007

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### Government Accountability Board

**EmR0803** – Repealing s. **Eth 3.01**, relating to the filing of all written communications and documents intended for the former Ethics Board; repealing s. **Eth 3.04**, relating to transcripts of proceedings before the former Ethics Board; and amending s. **EIBd 10.01**, relating to procedures for complaints with the former State Elections Board.

#### Finding of Emergency

The Government Accountability Board adopts this rule to clarify the complaint procedure applicable to complaints that will be filed with the Board under ethics, lobbying, contract-disclosure and campaign finance law and the separate complaint procedure applicable to complaints filed under elections law and the Help America Vote Act.

The Government Accountability Board finds that an emergency exists in the 2007 change in Wisconsin law that establishes the Wisconsin Government Accountability Board (effective January 10, 2008). Under 2007 Wisconsin Act 1, a statutory procedure or framework for investigation of complaints related to ethics, lobbying, contract disclosure and campaign finance, was established. That framework does not include the necessity of the filing of a complaint. Under the rules of the former Elections Board, Chapter EIBd 10, however, an investigation will not be commenced without the filing of a verified complaint. The Government Accountability Board finds that an emergency exists in the possible confusion that potential complainants may find in attempting to file a complaint with the Government Accountability Board and, as a result of that confusion, those complainants may be dissuaded from filing a complaint over which the Board has jurisdiction, or, because of that confusion, may fail to file that complaint in a timely fashion.

**Publication Date:** February 10, 2008  
**Effective Date:** February 10, 2008  
**Expiration Date:** July 9, 2008  
**Hearing Date:** June 2, 2008

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### Health and Family Services

#### *Management & Technology & Strategic Finance, Chs. HFS 1—*

**EmR0810** – Rule adopted amending ss. **HFS 10.55 (1) and 10.56 (2)**; and creating ss. **HFS 10.55 (1m) and 10.56 (2m)**, relating to fair hearings and continuation of benefits pending the outcome of a grievance, Department review, or fair hearing under the family care program.

#### 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:

2007 Wisconsin Act 20 eliminates entitlement to non-Medicaid eligibility for Family Care, which could result in some Family Care enrollees being determined ineligible and disenrolled from the program.

In addition, the federal Centers for Medicare and Medicaid Services (CMS) has restricted the Family Care benefit for enrollees at the non-nursing home level of care.

Currently, under ss. HFS 10.55 and 10.56, persons whose services are terminated may request a hearing and continuation of benefits during an appeal. Individuals who appeal the loss of non-Medicaid eligibility or reduction of services as a result of the restriction of the benefit for people eligible at the non-nursing home level of care will lose the appeal because the change in law and federal policy makes it clear that they are no longer entitled to those benefits. In addition, if benefits continued during an appeal, the individual would be responsible for repayment of the cost of continued services. Therefore, the right to appeal is of no real benefit.

HFS 10.56 (2) gives enrollees whose services are reduced or terminated the option to request continuation of services during a fair hearing, grievance, or Department review of the termination or reduction of services. For individuals appealing the loss of non-Medicaid eligibility, or termination or reduction of services as a result of the restriction of the benefit for people eligible at the non-nursing home level of care, continuation of services will be counter-productive to the welfare of the appellant, because the termination and reduction of benefits will have resulted from a change in law. The appellant will lose the appeal and as a result of the loss, be responsible for the cost of the continued services, which may be significant as costs could be in the thousands of dollars.

Under this emergency order, the Department is providing an exception to the right to a fair hearing and continuation of services during a fair hearing, grievance, or Department review when Family Care benefits are reduced or terminated by an act of the federal government or the state legislature and the individual whose benefits have been terminated or reduced does not dispute that he or she falls within the category of persons for whom the benefit was reduced or terminated. The Department has determined that appeals and continuation of benefits under these circumstances would be detrimental to the welfare of approximately 730 individuals and should be prevented.

**Publication Date:** April 7, 2008  
**Effective Date:** April 7, 2008  
**Expiration Date:** September 4, 2008  
**Hearing Date:** May 12, 2008

## Health and Family Services

### *Health, Chs. HFS 110—*

Rules adopted revising s. HFS 115.04, to include the condition known as Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the list of disorders and disorder types found under s. HFS 115.04.

#### Finding of Emergency

The early identification of particular congenital and metabolic disorders that are harmful or fatal to persons with the disorders is critical to mitigating the negative effects of such disorders. Therefore, s. 253.13, Wis. Stats., requires that every infant born be subjected to blood tests for congenital and metabolic disorders, as specified in administrative rules promulgated by the Department; however, parents may refuse to have their infants screened for religious reasons. The Department has issued ch. HFS 115, Screening of Newborns for Congenital and Metabolic Disorders, to administer this statutory requirement. Currently, s. HFS 115.04 lists 13 congenital and metabolic disorders and types of disorders, for a total of 47 different disorders, for which the state hygiene laboratory must test newborn blood samples.

In determining whether to add or delete disorders from the list under s. HFS 115.04, s. HFS 115.06 directs the Department to seek the advice of persons with expertise and experience concerning congenital and metabolic disorders. For this purpose, the Department has established the Wisconsin Newborn Screening Umbrella Advisory Group. Section HFS 115.06 also lists 6 criteria on which the Department must base its decision to add or delete disorders from s. HFS 115.04. These criteria are as follows:

1. Characteristics of the specific disorder, including disease incidence, morbidity, and mortality.
2. The availability of effective therapy and potential for successful treatment.
3. Characteristics of the test, including sensitivity, specificity, feasibility for mass screening and cost.
4. The availability of mechanisms for determining the effectiveness of test procedures.
5. Characteristics of the screening program, including the ability to collect and analyze specimens reliably and promptly, the ability to report test results quickly and accurately and the existence of adequate follow-up and management programs.
6. The expected benefits to children and society in relation to the risks and costs associated with the testing for the specific condition.

In consideration of these criteria, the Wisconsin Newborn Screening Advisory Umbrella Advisory Group has recently recommended the Department add the condition known as Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the 13 disorders and types of disorders currently screened for and listed in s. HFS 115.04. Persons with SCID are extremely vulnerable to infections, to the degree that the condition is universally fatal without treatment within the first year of life. With an estimated

prevalence of 1 in 66,000, and a Wisconsin annual birth rate around 71,000, the failure to screen for SCID could result in the death of 1–2 infants in the state every year.

The Advisory Group also recommended the Department begin screening newborns for SCID and related conditions of immunodeficiency as soon as possible. Before the screening can begin, the Department needs to add these conditions to the list in s. HFS 115.04. Therefore, it is proposed to put an emergency rule in effect first, to be followed by an identical proposed permanent rule to replace the emergency rule.

The Department will immediately promulgate identical permanent rules to replace these emergency rules.

**Publication Date:** December 27, 2007  
**Effective Date:** January 1, 2008  
**Expiration Date:** May 30, 2008  
**Hearing Date:** March 6, 2008

## Natural Resources (2)

### *Fish, Game, etc., Chs. NR 1—*

1. Rules adopted affecting **chs. NR 19 and 20**, relating to control of fish diseases and invasive species. (DNR Order Number FH-40-07(E))

#### Finding of Emergency

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

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

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

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

**Publication Date:** November 2, 2007  
**Effective Date:** November 2, 2007  
**Expiration Date:** March 31, 2008  
**Hearing Date:** December 3, 2007  
**Extension Through:** May 31, 2008

2. **EmR0808** – Rules adopted affecting chs. NR 19 and 20, relating to control of fish diseases and invasive species. (DNR Order Number FH-40-07A(E))

#### **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. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts (part of the Lake Winnebago system) were infected with the VHS virus. On May 23, May 24, and June 1, respectively, the Department learned that brown trout from Lake Michigan, smallmouth bass from Sturgeon Bay, and lake whitefish from Lake Michigan had tested positive for the virus.

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

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

This emergency rule amends the emergency rule relating to chs. NR 19 and 20 put into effect on November 2, 2007.

**Publication Date:** April 4, 2008

**Effective Date:** April 4, 2008

**Expiration Date:** These rules shall remain in effect only for 150 days from November 2, 2007, the effective date of Order No. FH-40-07(E), unless extended pursuant to s. 227.24 (2), Stats.

**Hearing Date:** May 12, 2008

**Extension Through:** May 31, 2008

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## **Natural Resources**

### *Environmental Protection – General, Chs. NR 100—*

**EmR0809** – Rule adopted to repeal s. NR 198.15 (2), to renumber s. NR 198.12 (6) to (10), to amend ss. NR 198.11, 198.14 (1) (e) and (f) 2., 198.23 (5) to (7), 198.33 (5), and 198.44 (5) and to create ss. NR 198.12 (6) and (7), 198.33 (6) and subch. V of ch. NR 198, relating to grants for the control of aquatic invasive species.

#### **Finding of Emergency**

The substantial increase in grant funding is a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The appropriation from which these funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department's ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule's limitations. An emergency rule will help to minimize or eliminate the amount of funds that are lapsed.

**Publication Date:** April 7, 2008

**Effective Date:** July 1, 2008

**Expiration Date:** November 28, 2008

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## **Natural Resources**

### *Environmental Protection – Air Pollution Control, Chs. NR 400—*

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

#### **Finding of Emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Preservation of the public welfare necessitates putting the rule into effect prior to the time that it would take if the department complied with the normal procedures. Federal regulations that are the basis for ch. 462, Wis. Adm. Code, were vacated on July 30, 2007 by the U.S. Court of Appeals. Both the vacated federal regulations and ch. NR 462 contain a date for compliance of September 13, 2007. This order is designed to bring state rules into conformity with the court-ordered vacatur of the federal regulations. Normal rule-making procedures will not allow implementation of ch. NR 462 to be stayed before September 13, 2007.

**Publication Date:** September 13, 2007

**Effective Date:** September 13, 2007

**Expiration Date:** February 10, 2008

**Hearing Date:** October 26, 2007

**Extension Through:** June 7, 2008

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### Public Instruction (3)

1. A rule is adopted creating **ch. PI 33**, relating to grants for nursing services.

#### Finding of Emergency

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

The school nursing grant program under s. 115.28 (47), Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$250,000 annually beginning in the 2007–08 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

**Publication Date:** November 24, 2007  
**Effective Date:** November 24, 2007  
**Expiration Date:** April 22, 2008  
**Hearing Date:** February 21, 2008  
**Extension Through:** June 20, 2008

2. **EmR0801** – Creating **ch. PI 31**, relating to grants for science, technology, engineering, and mathematics programs.

#### Finding of Emergency

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

The STEM program under s. 115.28 (46), Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$61,500 annually beginning in the 2007–08 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

**Publication Date:** January 30, 2008  
**Effective Date:** January 30, 2008  
**Expiration Date:** June 28, 2008  
**Hearing Dates:** March 18 and 21, 2008

3. **EmR0805** – Creating **ch. PI 16**, relating to four–year–old kindergarten grants.

#### Finding of Emergency

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

The 4–year–old kindergarten grant program under s. 115.445, Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$3 million annually beginning in the 2008–09 school year. In order for school districts to develop application criteria and procedures in time for the program to operate in the upcoming school year, rules must be in place as soon as possible.

**Publication Date:** February 25, 2008  
**Effective Date:** February 25, 2008  
**Expiration Date:** July 24, 2008  
**Hearing Date:** April 17, 2008

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### Regulation and Licensing

**EmR0811** – Rule adopted amending **s. RL 16.06 (1) (a), (b) and (d)**, relating to how to use approved forms for the practice of real estate.

#### Finding of Emergency

The Department of Regulation and Licensing finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments into effect prior to the time the amendments would take if the agency complied with the notice, hearing and publication requirements established for rule–making in **ch. 227, Stats.** The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, **WB–1**, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing education class demonstrating the allowed means to modify an approved form. The modified form was shown to industry stakeholders, the department’s council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule–making to prevent modification of forms such as **WB–1** in the manner submitted.

**Publication Date:** April 16, 2008  
**Effective Date:** April 16, 2008  
**Expiration Date:** September 13, 2008

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### Revenue

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

#### Finding of Emergency

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

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

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

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with

the Secretary of State and Revisor of Statutes, as provided in s. 227.24, Stats.

**Publication Date:** October 29, 2007  
**Effective Date:** October 29, 2007  
**Expiration Date:** March 27, 2008  
**Hearing Date:** January 2, 2008  
**Extension Through:** May 25, 2008

### Transportation

Rule adopted creating **ch. Trans 178**, relating to the Unified Carrier Registration System.

#### Analysis

This chapter establishes in the Wisconsin Administrative Code the fees to be charged under the Unified Carrier Registration (UCR) system, and establishes a method for counting the number of vehicles so that an entity knows whether it is required to register under UCR and, if so, which fee bracket applies to the entity.

#### Exemption From Finding of Emergency

The Legislature, by Section 2927, as created by 2007 Wis. Act 20, provides an exemption from a finding of emergency for the adoption of the rule.

**Publication Date:** December 19, 2007  
**Effective Date:** December 19, 2007  
**Expiration Date:** See Section 2927, 2007 Wis. Act 20  
**Hearing Date:** March 5, 2008

### Workforce Development (3)

#### *Family Supports, Chs. DWD 12 to 59*

1. Rule adopted amending s. DWD 56.06 (1) (a) 1. and creating s. DWD 56.06 (1) (a) 1. r., relating to child care rates.

#### Finding of Emergency

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

2007 Wisconsin Act 20 reflects that child care rates will not be increased for the 2008–2009 biennium. Chapter DWD 56 currently provides that child care rates shall be set annually in accordance with a market rate survey and procedures described in s. DWD 56.06 (1). Historically, the rate adjustments have been effective January 1 of the new year. This emergency rule is necessary to provide that child care rates will not be adjusted for 2008 in accordance with 2007 Wisconsin Act 20. A corresponding permanent rule will provide that child care rates will not be adjusted for 2008 and 2009.

**Publication Date:** December 27, 2007  
**Effective Date:** January 1, 2008  
**Expiration Date:** May 30, 2008  
**Hearing Date:** March 10, 2008

2. **EmR0806** – Rule adopted amending s. DWD 56.08 (1) and (2) (a), (e), and (f) and repealing and recreating Table

**DWD 56.08**, relating to child care copayments and affecting small businesses.

#### Finding of Emergency

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

The federal Department of Health and Human Services is requiring that Wisconsin eliminate different copayment amounts for families who receive child care services from a certified provider and families who receive child care services from a licensed provider. The change to the copayment schedule must be implemented by April 1, 2008, or Wisconsin risks losing \$82 million annually from the Child Care Development Fund.

**Publication Date:** February 27, 2008  
**Effective Date:** March 30, 2008  
**Expiration Date:** August 27, 2008  
**Hearing Date:** April 11, 2008

3. **EmR0807** – Rule adopted amending s. DWD 56.04 (1) (a) 1., (2) (a) 1. b., and (5) (c); and repealing and recreating s. DWD 56.04 (2) (d), relating to child care enrollment underutilization.

#### Finding of Emergency

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

The Department projects a potential current year budget shortfall in the child care subsidy program of \$18.6 million if no corrective measures are taken. This rule will provide for more efficient use of the program's limited funding.

**Publication Date:** March 24, 2008  
**Effective Date:** March 30, 2008  
**Expiration Date:** August 27, 2008  
**Hearing Date:** May 19, 2008

### Workforce Development

#### *Public Works Construction Contracts, Chs. DWD 290 to 294*

Rule adopted amending ss. DWD 290.155 (1) and 293.02 (1) and (2), relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements and affecting small businesses.

#### Finding of Emergency

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

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. The adjustment of the thresholds for the application of the payment and

performance assurance requirements avoids imposing an additional administrative burden on contractors for the same reason. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the rule-making process.

**Publication Date: December 27, 2007**

**Effective Date: January 1, 2008**

**Expiration Date: May 30, 2008**

**Hearing Date: February 14, 2008**

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## Scope Statements

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### Chiropractic Examining Board

#### Subject

Revises chapters Chir 2, 3, and 5, relating to applications, biennial registration (renewal), licensure by endorsement, temporary permits, and continuing education.

#### Objective of the Rule

2007 Wisconsin Act 104 amends several sections of ch. 446, Stats., Practice of Chiropractic. The amendments to ch. 446, Stats., require the Chiropractic Examining Board to amend administrative rules of application for licensure, licensure by endorsement, application for a temporary permit, renewal of licensure and continuing education. As per provisions of 2007 Wisconsin Act 104, the proposed rules shall include the requirement for applicants and licensees to be proficient in the use of automated external defibrillators (AED's) through the completion of an approved instruction program prior to initial licensure, issuance of a temporary permit and renewal of licensure. The proposed rules also indicate that training in the use of AED's is included in board continuing education.

#### Policy Analysis

The Chiropractic Examining Board's statute and rules governing application, licensure by endorsement, application for a temporary permit and renewal do not currently have a requirement for proficiency in the use of an AED. Current rules for renewal of licensure do require current certification in cardiopulmonary resuscitation (CPR); however, CPR training is not a prerequisite for licensure by endorsement or for the temporary permit. The implementation of the rules may initially be done through emergency rule making without finding of emergency (as per non–statutory provisions of 2007 Wisconsin Act 104).

The implementation of these rules will require licensed chiropractors to hold approved training in the use of AED's as a precondition for licensure by endorsement and for the temporary chiropractic permits for those practicing in state as a chiropractor for participants in a sporting or performing arts event. At the time of the publication of this scope statement, the four states surrounding Wisconsin (Michigan, Minnesota, Illinois, and Iowa) do not require chiropractors to obtain AED proficiency as a prerequisite for licensure or renewal.

Finally, the implementation of these rules, as directed by 2007 Wisconsin Act 104, will require all Wisconsin chiropractors to complete an approved training program in the usage of AED's prior to renewal in the current biennium. The current biennium ends on December 31, 2008.

#### Statutory Authority

Sections 15.08 (5) (b) and 227.11 (2), Stats., and subch. VII of ch. 440, Stats.

#### Entities Affected by the Rule

Chiropractic license applicants, applicants for licensure by endorsement, applicants for temporary permit, active chiropractic license holders.

### 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.

#### Estimate of Time Needed to Develop the Rule

Total hours: 160.

### Employee Trust Funds

#### Subject

Revises section ETF 11.11, relating to legal counsel advising the boards that are attached to the department while a board considers a final decision pertaining to an appeal.

#### Objective of the Rule

The proposed modifications concern appointment of legal counsel by the Employee Trust Funds Board, Wisconsin Retirement Board, Teachers Retirement Board, Group Insurance Board, and the Deferred Compensation Board and the nature of the legal representation provided to those boards during their consideration of a final decision pertaining to a pending appeal. The proposed rule does not change the responsibility of the Department of Justice to provide legal counsel pursuant to Wis. Stat. s. 40.03 (3).

#### Policy Analysis

Under current law (Wis. Stat. s. 40.03 (3) ), the Department of Justice is required to furnish legal counsel and prosecute and defend all actions brought by or against the Employee Trust Funds Board, the Group Insurance Board, the department, or any employee of the department as a result of the performance of the department employee's duties. Under the current administrative rules, board staff arrange for legal counsel to advise the Employee Trust Funds Board, Wisconsin Retirement Board, Teachers Retirement Board, Group Insurance Board, and the Deferred Compensation Board from one of three sources: 1) the Department of Justice, if the department is a party to the appeal; 2) the department's chief counsel, if the department is not a party to the appeal; and 3) outside counsel, if neither the department's chief counsel nor the Department of Justice is able to provide legal counsel. The current rule also prescribes a number of specific duties of the legal counsel.

Under the proposed modifications, board staff may arrange for legal counsel for the boards as deemed necessary and in accordance with Wis. Stat. s. 40.03 (3). In addition, the proposed modifications will eliminate the specific duties of the legal counsel contained in the current rule and simply provide that the legal counsel shall provide legal representation to the board. The proposed modifications will provide the boards with additional flexibility in the use of legal counsel.

#### Statutory Authority

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

#### Entities Affected by the Rule

The proposed modifications would affect the various boards attached to the department, the department itself, and the Department of Justice.

### Comparison with Federal Regulations

No specific federal regulation is implicated by this rulemaking. There is no impact on the provisions of the Internal Revenue Code regulating qualified pension plans. Similarly, there is no impact on s. 40.015, Stats., which requires that the Wisconsin Retirement System be maintained as a qualified plan.

### Estimate of Time Needed to Develop the Rule

The Department estimates that state employees will spend 40 hours to develop this rule.

## Financial Institutions – Securities

### Subject

Revises the Wisconsin Securities Law, chs. DFI–Sec 1 to 9, to reflect the recent repeal and recreation of the Wisconsin Securities Law in 2007 Wisconsin Act 196, and amends the Wisconsin Franchise Law rules, chs. DFI–Sec 31 to 36, to make them consistent with recently adopted Federal Trade Commission franchise–related regulations.

### Objective of the Rule

Because the repeal and recreation of the Wisconsin Securities Law in 2007 Wisconsin Act 196 (signed by the Governor on March 27, 2008) — which involved the adoption of the 2002 Uniform Securities Act (“2002 USAct”) as developed by the National Conference of Commissioners on Uniform State Laws — resulted in changes to all aspects of Wisconsin securities regulation (definitions, securities registration procedures and registration exemptions, securities licensing, enforcement powers and procedures, as well as general administrative powers), the corresponding administrative rule chapters and provisions relating to those aspects/categories of law changes need to be updated and made consistent. Also, because the effectiveness date for 2007 Wisconsin Act 196 is January 1, 2009, the proposed rule–making process is being conducted now to enable the rules to be finalized concurrent with the effectiveness of the legislation.

Separately, because the adoption by the Federal Trade Commission of its FTC Franchise Rule (“the FTC Franchise Rule,” which became effective for use on a voluntary basis for franchisors on July 1, 2007, and becomes effective on a mandatory basis July 1, 2008) supersedes and preempts several existing Wisconsin franchise rules establishing requirements for disclosure documents used in connection with the offer and sale of franchises to persons in Wisconsin, the Wisconsin franchise rules so impacted need to be revised to be consistent with the FTC Rule. As a related matter, remedial franchise–related legislation was enacted in 2007 Wisconsin Act 150 (effective April 5, 2008) which made a necessary statutory change to make Wisconsin’s timing deadline within which franchisors must provide a franchise disclosure document to a prospective purchaser, consistent with the recent FTC Franchise Rule change on that subject.

### Policy Analysis

The Wisconsin Securities Law rules relating to the corresponding statutory provisions of the Wisconsin Securities Law changed by 2007 Wisconsin Act 196 need to be revised and updated as necessary to be made consistent and thereby facilitate compliance by securities issuers and securities licensees for the benefit of Wisconsin public investors.

Similarly, the Wisconsin Franchise Law disclosure document–related rules impacted by the changes to the FTC Franchise Rule need to be revised and updated as necessary to be made consistent and thereby facilitate compliance by franchisors seeking to offer and sell franchises to persons in Wisconsin. For purposes of providing regulatory consistency among the 15 state jurisdictions (including Wisconsin) that regulate offers/sales of franchises, the Franchise and Business Opportunity Project Group of the North American Securities Administrators Association (“NASAA”) developed in April, 2008, Draft 2008 Franchise Registration and Disclosure Guidelines (“Franchise Guidelines”) that state jurisdictions can adopt as the required format for franchise disclosure documents in states that register franchise offerings. Those Franchise Guidelines were developed to be, and are, consistent with the FTC Franchise Rule which allows franchise law states to impose additional disclosure requirements that are consistent with the FTC Franchise Rule. In that regard, the Franchise Guidelines adopt the FTC form of franchise disclosure document with the addition of a state cover page, and include new instructions for franchisors to file registrations with state administrators, as well as revised application forms. The proposed Wisconsin Franchise Rule revisions will include, via incorporation by reference, the above–described NASAA Franchise Guidelines and forms.

### Statutory Authority

For the Securities Law–related rule changes based on 2007 Wisconsin Act 196:

Sections 551.605 (1) (a), (b), (c), (2), (3) and (4), 551.102 (2), (4)(e), (11) (p), (15) (h), (16) (d) and (28) (h), 551.105, 551.201 (1) (b), (3) (c), (6), (7) (intro.), (a) and (b), 551.202 (6), (13) (c), (14) (b) and (23), 551.203, 551.302 (intro.), (1) (a), (b), (c), (3) and (5), 551.304 (2) (intro.), (r), (3) and (5), 551.305 (2), (7), (9), (10) and (11), 551.306 (1) (b), 551.401 (2) (h) and (4) (intro.), 551.402 (2) (i) and (5), 551.403 (2) (c), 551.404 (2) (b) and (4), 551.405 (2) (a) 4., (c), (3), (4) (b) and (c), 551.406 (1), (3) (b), (4) and (5), 551.407 (4), 551.408 (5), 551.409, 551.411 (1), (2), (3) (a), (c), (5), (6), (7) and (8), 551.411 (4) (b) and (5), 551.502 (2) and (3), 551.504 (1), 551.606 (3), 551.608 (2) (intro.), 551.611 (1), 551.614 (1) (b) 1., 2. and (4), Wis. Stats.

For the Franchise Law–related changes under Chapter 553, Wis. Stats:

Sections 553.58 (1) and 553.27 (4), Wis. Stats.

### Entities Affected by the Rule

**Securities Law rules:** Issuers of registered securities or securities exempt from registration, broker–dealers and their securities agents, investment advisers and their investment adviser representatives, federal and state securities regulatory authorities, and securities self–regulatory organizations.

**Franchise Law rules:** Franchisors making franchise registration filings in Wisconsin, all of which filings must include franchise disclosure documents covering prescribed categories of information.

### Comparison with Federal Regulations

There are no newly–developed or proposed federal securities law–related regulations that are intended to be addressed by the proposed Wisconsin Securities Law rulemaking. However, the existing Wisconsin Securities Law and rules that currently coordinate with federal securities registration, registration exemption, broker–dealer and investment adviser licensing provisions will continue to be coordinated with corresponding federal requirements, consistent with current 551.67, Wis. Stats., and recently



enacted 551.615, Wis. Stats. Each of those statute sections provide that "This Chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact the 'Uniform Securities Act' and to coordinate the interpretation and administration of this Chapter with related federal regulation."

With regard to the proposed Wisconsin Franchise Law–related rulemaking, as stated above in the Objectives and the Policy Analysis sections of this Scope Statement, such rulemaking is necessary in order to make Wisconsin's franchise disclosure document–related rules consistent with the Federal Trade Commission's recently adopted FTC Franchise Rule.

#### **Estimate of Time Needed to Develop the Rule**

150 hours to develop the comprehensive revisions necessary to be made to the Wisconsin Securities Law Rules.

15 hours to develop the Franchise Law–related rules.

#### **Contact Information**

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### **Government Accountability Board**

#### **Subject**

Creates section GAB 1.01, relating to a settlement offer schedule for campaign finance violations that are resolved by settlement between the Government Accountability Board and a registrant or other party.

#### **Objective of the Rule**

The rule establishes settlement offer guidelines that the Government Accountability Board staff use to resolve a campaign finance violation in lieu of an enforcement action.

#### **Policy Analysis**

Most minor or less serious violations of chapter 11 of the statutes, the campaign finance chapter, including late filing of campaign finance reports and exceeding aggregate (45%/65%) contribution limits, are resolved by settlement between the offending registrant and the Government Accountability Board, pursuant to s. 5.05 (1) (c), Stats. The previous settlement offer schedule followed by the former Elections Board needs to be up–dated by its successor, the Government Accountability Board and needs to be codified by rule.

#### **Statutory Authority**

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

#### **Entities Affected by the Rule**

All persons and committees who register with the Government Accountability Board or with any other filing officer under Chapter 11, Stats., and any other persons or committees who fail to comply with Chapter 11, Stats.

#### **Comparison with Federal Regulations**

Currently, the majority of the Federal Election Commission's cases are settled through pre–probable cause

conciliation comparable to Wisconsin's settlement procedure. Consistent with the goal of expeditious resolution of enforcement matters, the Commission encourages pre–probable cause conciliation. The Commission has a practice in many cases of reducing the civil penalty it seeks through its opening settlement offer in pre–probable cause conciliation. However, once pre–probable cause conciliation has been terminated, this reduction (normally 25%) is no longer available and the civil penalty will generally increase. The FEC is now moving to make permanent a program that allows respondents to request and receive a hearing on a probable cause determination as part of the conciliation procedure, to increase the probability of conciliation.

#### **Estimate of Time Needed to Develop the Rule**

At least 40 hours of state employees' time.

### **Health and Family Services**

#### ***Medical Assistance, Chs. HFS 100—***

#### **Subject**

Revises chapter HFS 105 to include federally recognized American Indian tribes and bands in Wisconsin as being eligible for MA certification as personal care providers.

#### **Policy Analysis**

These rule changes will be part of a larger rulemaking order. A statement of scope regarding the other elements of the rulemaking order, all of which relate to home care services under Wisconsin Medicaid, appeared in the Wisconsin Administrative Register on July 31, 2003.

Currently under s. HFS 105.17 (1) only licensed home health agencies and county departments established under ss. 46.215, 46.22, or 46.23, county departments established under 51.42, or 51.437, Stats., which have the lead responsibility in the county for administering the community options program under s. 46.27, Stats., or an independent living center as defined under s. 46.96 (1) (ah), Stats., are eligible to receive MA certification as personal care providers.

Wisconsin Medicaid is considering revising s. HFS 105.17 to include the eleven federally recognized Wisconsin tribes and bands to the list of governmental entities allowed to be certified as Wisconsin Medicaid personal care providers. The change would allow the tribal agencies the same right to certification as is granted to a county department established under s. 46.215, 46.22 or 46.23 Stats., and to a county department established under s. 51.42 or 51.437, Stats., which has the lead responsibility in the county for administering the community options program under s. 46.27, Stats.

This change assists Governor Doyle in implementing the State–Tribal Consultation Initiative, which originated with his issuance of Executive Order #39 in 2004. Executive Order #39 recognized the sovereignty of the 11 tribal governments in Wisconsin and the unique government–to–government relationship that exists between the State and the tribes. The Initiative is a comprehensive program aimed at increasing the ties between state agencies and tribal governments to streamline and improve the services our governments provide to both tribal and non–tribal members. This Initiative, now fully underway and unique in Wisconsin's history, will pave the way for state–tribal partnerships well into the future.

Given the fact that Medicaid is a partnership between state and federal government, it is appropriate that the 11 tribal

governments in Wisconsin be given every opportunity to exercise their sovereignty. This initiative is but a small part of that effort.

#### **Statutory Authority**

Sections 49.45 (10) and 227.11 (2) (a), Stats.

#### **Entities Affected by the Rule**

Federally recognized American Indian tribes or bands in Wisconsin.

#### **Comparison with Federal Regulations**

Several sections of the Code of Federal Regulations provides the regulatory authority to provide services under the various home care programs of the Medicaid program. 42 CFR section 440.70 provides the regulatory authority to provide home health services, while 42 CFR section 440.80 addresses private duty nursing services; 42 CFR section 440.166 addresses nurse practitioner services; 42 CFR section 440.167 addresses personal care services; and 42 CFR section 440.185 addresses respiratory care for ventilator–dependent individuals. The federal regulations are less detailed than the proposed rule. The Department believes that its proposed administrative rule changes are necessary to increase the conformance of administrative rules with current accepted service technologies and delivery systems, state statutes, and federal regulations.

#### **Estimate of Time Needed to Develop the Rule**

Department staff estimate it will take Division of Health Care Access and Accountability staff about 8 hours to develop and promulgate the proposed rules.

### **Medical Examining Board**

#### **Subject**

Revises section Med 20.05, relating to temporary certificates for respiratory care practitioners.

#### **Objective of the Rule**

To conform ch. Med 20, relating to respiratory care practitioners, to the provisions enacted by 2007 Wisconsin Act 54, which created a temporary certificate for the practice of respiratory care.

#### **Policy Analysis**

The temporary certificate to practice respiratory care authorized by this Act allows for a maximum of three months of practice under the certificate. This is available to a limited category of applicants who have passed the national examination. Currently there is a one year temporary certificate available to applicants who have not passed the national examination.

#### **Statutory Authority**

Sections 15.08 (5) (b), 227.11 (2), 448.04 (1) (i) and 448.40 (1), Stats.

#### **Entities Affected by the Rule**

The Medical Examining Board, the Respiratory Care Practitioners Examining Council, the Wisconsin Department of Regulation and Licensing, respiratory care practitioners and health care facilities.

#### **Comparison with Federal Regulations**

None.

#### **Estimate of Time Needed to Develop the Rule**

40 hours

### **Natural Resources** *Fish, Game, etc., Chs. NR 1—*

#### **Subject**

Revises chapter NR 10, relating to seasons and daily bag limits for migratory game bird hunting.

#### **Policy Analysis**

This rule order will establish the 2008 migratory bird hunting seasons. In late July Department staff attend the Mississippi Flyway Council (MFC) Technical and Council meetings where they will receive proposed season framework options from the U.S. Fish and Wildlife Service (USFWS). Staff will then work with other states in our Flyway to develop recommendations that are voted upon by the MFC. Proposals that are passed at the MFC meeting are forwarded to the FWS for consideration by the Service Regulations Committee (SRC) in late July. Department staff will contact the FWS following the SRC meeting to obtain the latest season recommendations.

While not traditionally a part of this rule making process, this year the proposal may include a provision that changes the mourning dove hunting season. At a meeting in June the USFWS will discuss extending that season by ten days and, if approved, the new season could be adopted in our state rules.

Once the USFWS's final framework is available, Department staff can summarize waterfowl status and regulation information for Wisconsin citizens. This information is presented and public comments are received from the Migratory Committee of the Conservation Congress and a public meeting (Post–Flyway Meeting) of interest groups and individuals. The following week, public hearings will be held around the state to solicit additional input. The Department then promulgates a permanent and emergency rule simultaneously in order to open the waterfowl seasons in September.

#### **Statutory Authority**

Sections 29.014, 169.11, 29.885 and 29.889, Stats.

#### **Entities Affected by the Rule**

These rules will impact migratory game bird hunters and those who enjoy viewing waterfowl in the state of Wisconsin.

#### **Comparison with Federal Regulations**

Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually through the USFWS regulations process. As part of the federal rule process, the service proposes a duck harvest–management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Under this harvest–management objective, the relative importance of hunting opportunity increases as duck populations approach the goals in the NAWMP. Thus, hunting opportunity is maximized when the population is at or above goals. Other factors such as habitat are also considered. The Regular Canada goose season is based on the allowable Mississippi Valley Population (MVP) harvest which will be determined based on the spring breeding population goal for that population and the spring population estimate obtained from an aerial survey of the MVP breeding range. All the proposed

modifications included in this rule order are consistent with these parameters and guidelines which are annually established by the Fish and Wildlife Service in 50 CFR 20.

#### **Estimate of Time Needed to Develop the Rule**

Approximately 500 hours will be needed by the Department to develop the rule prior to and following the hearings.

#### **Agency Contact Person**

Kent Van Horn, Migratory Birds Specialist, 101 South Webster Street, PO Box 7921, Madison, WI 53707–7921, (608) 266–8841, [Kent.Vanhorn@wisconsin.gov](mailto:Kent.Vanhorn@wisconsin.gov)

### **Public Instruction**

#### **Subject**

Revises ch. PI 30, relating to special education aid for certain pupil services personnel.

#### **Policy Analysis**

The salaries of school nurses, school social workers, school psychologists, and school counselors employed for a special education program are among the costs that are eligible to be reimbursed by the state through special education aid. If the amount appropriated for such aid is insufficient to fully reimburse the costs, the amount paid is prorated. 2007 Wisconsin Act 221 grants the department rule making authority and directs the department to determine the average percentage of work time that each of the personnel categories specified above spends providing services to children with disabilities, and provides that that percentage of the salaries of personnel in that category is the cost eligible for reimbursement from the state.

The proposed rules will specify the average percentage of the salaries of school nurses, school social workers, school psychologists, and school counselors that are eligible for reimbursement from the state.

#### **Statutory Authority**

Section 115.88 (1m) (b), Stats.

#### **Entities Affected by the Rule**

Public School Districts, CESAs, and CCDEBs.

#### **Comparison with Federal Regulations**

N/A

#### **Estimate of Time Needed to Develop the Rule**

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

### **Transportation**

#### **Subject**

Creates chapter Trans 263, relating to a multiple trip permit for certain overweight vehicles or vehicle combinations transporting granular roofing materials.

#### **Objective of the Rule**

This rule making is required by 2007 Wis. Act 171. The law establishes certain conditions for the permit and certain limitations on operation. This proposed rule will implement those conditions and limitations. The proposed rule will also define “granular roofing material” in order to make eligibility for permit and enforcement clear and uniform.

#### **Policy Analysis**

This proposed rule implements a newly–enacted law. This rule making does not amend existing policies. On the other hand, to the extent allowed by the newly–enacted law, this proposed rule will apply to the new permit similar policies that the Department currently applies to other multiple trip permits.

#### **Statutory Authority**

Section 348.27 (15) (d), as created by 2007 Wis. Act 171.

#### **Entities Affected by the Rule**

Motor carriers and shippers that transport granular roofing materials, under the provisions of 2007 Wis. Act 171.

#### **Comparison with Federal Regulations**

Federal regulation governs overweight transport on certain federal highways, including general prohibition of divisible overweight loads on Interstate highways. 2007 Wis. Act 171 provides that a permit under this law may be issued for up to 2.5 miles on any state trunk highway if consistent with federal law. In implementing s. 348.27 (15) (d), Stats., this proposed rule may address the issue of consistency with federal law.

#### **Estimate of Time Needed to Develop the Rule**

100 hours

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# Submittal of Rules to Legislative Council Clearinghouse

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

## **Agriculture, Trade and Consumer Protection**

### **CR 08–038**

On April 29, 2008, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order creates subch. IV of chapter ATCP 161, relating to the “Buy Local” grant program.

#### **Agency Procedure for Promulgation**

The department will hold public hearings on this rule after the Rules Clearinghouse completes its review. The department’s Agricultural Development Division is primarily responsible for this rule.

#### **Contact Information**

Amy Bruner–Zimmerman  
(608) 224–5017

## **Commerce**

### *Fee Schedule, Ch. Comm 2*

### *Licenses, Certifications and Registrations, Ch. Comm 5*

### **CR 08–039**

On April 29, 2008, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises chapters Comm 2 and 5, relating to program revenue fees.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on May 28, 2008.

#### **Contact Information**

James Quast  
Program Manager  
(608) 266–9292  
jim.quast@wisconsin.gov

## **Commerce**

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

### **CR 08–037**

On April 25, 2008, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises chapter Comm 131, relating to diesel truck idling reduction grants.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on May 27, 2008. The Business Development Division is primarily responsible for promulgation of the rules.

#### **Contact Information**

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

## **Financial Institutions – Corporate and Consumer Services**

### **CR 08–041**

On May 1, 2008, the Department of Financial Institutions, Division of Corporate and Consumer Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order creates chapter DFI–CCS 20, relating to video service franchise.

#### **Agency Procedure for Promulgation**

A hearing is required and will be held on June 3, 2008. The organizational unit responsible for the promulgation of the rule is the Division of Corporate and Consumer Services.

#### **Contact Information**

Mark Schlei  
Deputy General Counsel  
(608) 267–1705

## **Health and Family Services**

### *Health, Chs. HFS 110—*

### **CR 08–036**

On April 18, 2008, the Department of Health and Family Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises chapter HFS 159, relating to the training, certification, and responsibilities of individuals and companies performing regulated asbestos abatement activities and affecting small businesses.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be scheduled at a later time.

#### **Contact Information**

For substantive questions on rules contact:

Shelley Bruce  
(608) 267-0298  
brucesa@dhfs.state.wi.us  
Fax: (608) 266-9711

For small business considerations and rules processing information contact:

Rosie Greer  
(608) 266-1279  
greerrj@dhfs.state.wi.us

### **Regulation and Licensing**

#### **CR 08-040**

On May 1, 2008, the Department of Regulation and

Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises section RL 16.06, relating to the use of approved forms for the practice of real estate.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on June 26, 2008, at 10:15 a.m. in Room 121C, 1400 East Washington Avenue, Madison, WI (55 North Dickinson Street Entrance).

#### **Contact Information**

Pamela Haack  
Office of Legal Counsel  
(608) 266-0495  
[Pamela.haack@drl.state.wi.us](mailto:Pamela.haack@drl.state.wi.us)

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## Rule–Making Notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

CR 08–027

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on a proposed amendment to chapter ATCP 123, Wis. Adm. Code, relating to electronic communication services.

#### Hearing Information

**Wednesday, May 28, 2008**

9:00 a.m. to 11:00 a.m.

Dept. of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room (CR–106)

Madison, Wisconsin, 53718–6777

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by Thursday May 15, 2008, by writing to Michelle Reinen, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–5160. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

#### Submission of Written Comments

DATCP will hold a public hearing at the time and place shown above. DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until Friday, June 13, 2008 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to [michelle.reinen@wi.gov](mailto:michelle.reinen@wi.gov) or online at: <https://apps4.dhfs.state.wi.us/admrules/public/Home>

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

#### Copies of Proposed Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–5160 or emailing [michelle.reinen@wi.gov](mailto:michelle.reinen@wi.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>

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers rules to protect consumers against unfair sales and billing practices related to telecommunications services, cable television services and satellite television services. Current rules are contained in ch. ATCP 123, Wis. Adm. Code.

This rule updates current rule coverage to reflect new service delivery methods and “bundling” practices, and to conform to law changes enacted in 2007 Wis. Act 42. This

rule maintains current protection for video service subscribers, regardless of the method used to deliver the video service.

#### *Statutes interpreted*

Sections 100.20 and 100.207, Wis. Stats.

#### *Statutory authority*

Sections 93.07 (1), 100.20 (2), 100.207 (6) (e) and 100.209 (3), Wis. Stats.

#### *Explanation of agency authority*

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has authority, under s. 100.207, Stats., to regulate sales and billing practices related to telecommunications. DATCP also has broad authority, under s. 100.20, Stats., to regulate methods of competition and trade practices in business.

#### *Related rules or statutes*

The Wisconsin public service commission (PSC) regulates telecommunications service providers to the extent provided under chapter 196, Stats. The department of financial institutions (DFI) and local municipalities regulate video service providers to the extent provided in ch. 66, Stats.

2007 Wisconsin Act 42 changed the way that Wisconsin regulates cable television and other video services. The act provided for state, rather than local, franchising of video service providers. The act also changed prior definitions, and added a new definition of “video services.” This rule incorporates new statutory definitions, in order to maintain the coverage of current rules.

#### *Rule background*

Current DATCP rules regulate unfair sales and billing practices related to telecommunications, cable television and satellite television provided to consumers on a subscription basis. The current rules do all of the following:

- Require providers to disclose subscription terms and conditions.
- Prohibit billing for unordered services.
- Prohibit the imposition of price increases without prior notice and opportunity to cancel.
- Prohibit unfair “negative option” billing practices.

Since DATCP adopted the current rules, business practices and technology have changed. For example, video services can now be delivered over telephone lines. Providers now offer “bundled” service packages that may include local telephone, long–distance telephone, wireless telephone, video, internet and other services. Consumers may receive a number of these services on one electronic device, and may receive one bill for all of the “bundled” services.

This rule updates current rule coverage to ensure that protection is afforded to video service consumers on an equal basis, regardless of the technology or method used to deliver the service. This rule does not make major changes in rule content, but does make minor content adjustments to address new service delivery methods and “bundling” practices.

#### *Plain language analysis*

This rule does all of the following:

- Retitles ch. ATCP 123 from “Telecommunications and Cable Television Services” to “Electronic Communication Services.”
- Defines “electronic communication service” to include telecommunications service, video service, broadband internet service and satellite television service provided on to consumers on a subscription basis. “Electronic communication service” also includes any good or service that a subscriber is required to purchase from the service provider in order to obtain the electronic communication service.
- Defines “video programming” and “video service,” consistent with current statutes.
- Changes “telecommunications service or cable television service” where it appears in the main body of the rule to “electronic communication service.”
- Changes other words in the rule text to reflect recent statutory definition changes (2007 Wisconsin Act 42).

#### ***Comparison with federal regulations***

Congress and the federal communications commission have significantly reduced federal regulation of telecommunications service and video services. The federal government has left, to state governments, much of the responsibility for regulating the business practices of service providers.

#### ***Comparison with rules of adjacent states***

No surrounding states regulate the subscription and billing practices of telecommunication and video service providers in a manner similar to Wisconsin. The surrounding states approach the regulation of this industry by focusing on specific trade practices, such as the unauthorized switching of long–distance services or consumer protection for users of coin–operated phones. Wisconsin is the only state that has comprehensive regulation providing standards for subscription and billing practices that apply equally to all competing providers.

#### ***Summary of factual data and analytical methodologies***

This rule does not depend on any complex analysis of data. This rule merely updates current rules to address changes in business practices and technology, and to incorporate new definitions created under 2007 Wisconsin ACT 42.

#### **Initial Regulatory Flexibility Analysis**

This rule will have few, if any, negative impacts on business. This rule simply updates the definitions and coverage of current rules to prevent the erosion of current consumer protection regulations. Some video service providers now use new electronic delivery methods that are not covered by current rules. This rule applies existing consumer protection standards to those new delivery methods, so that consumers will continue to enjoy protection. This rule will help maintain fair competition between video service providers, regardless of the delivery method used. None of the video service providers using the new electronic delivery methods are small businesses.

#### **Fiscal Estimate**

This rule will have no significant fiscal impact on DATCP or local units of government.

## **Notice of Hearing**

### **Agriculture, Trade and Consumer Protection**

#### **CR 08–038**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on rules creating subch. IV of ch. ATCP 161, relating to the “buy local” grant program created under s. 93.48, Stats. DATCP adopted a temporary emergency rule effective February 22, 2008, and is also proposing a “permanent” rule. The hearing will cover the “emergency” rule as well as the proposed “permanent” rule.

#### **Hearing Information**

##### **May 30, 2008**

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

WI Dept. of Agriculture, Trade & Consumer Protection  
2811 Agriculture Drive – Board Room, 1<sup>st</sup> Floor  
Madison, WI 53704

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by May 23, by writing to Shirley Schultz, Division of Agricultural Market Development, P.O. Box 8911, Madison, WI 53708–8911, [Shirley.schultz@wisconsin.gov](mailto:Shirley.schultz@wisconsin.gov), telephone (608) 224–5129. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

#### **Submission of Written Comments**

DATCP will hold the public hearing at the time and location shown above. DATCP invites the public to attend the hearing and comment on the rules. Following the hearing, the hearing record will remain open until Wednesday, June 11, 2008 for additional written comments. Comments may be sent to the Division of Agricultural Development at the address below, by email to [datcpBLBW@wisconsin.gov](mailto:datcpBLBW@wisconsin.gov) or online: <https://apps4.dhfs.state.wi.us/admrules/public/Home>

To provide comments or concerns relating to small business, you may also contact DATCP’s small business regulatory coordinator Keeley Moll at the address above, or by emailing to [Keeley.Moll@wisconsin.gov](mailto:Keeley.Moll@wisconsin.gov) or by telephone at (608) 224–5039.

#### **Copies of Proposed Rule**

You may obtain free copies of the temporary “emergency” rule and proposed “permanent” rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Market Development, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain copies by calling (608) 224–5017 or emailing [datcpBLBW@wisconsin.gov](mailto:datcpBLBW@wisconsin.gov). Copies will also be available at the hearing. To view the proposed rule online, go to: <https://apps4.dhfs.state.wi.us/admrules/public/Home>

#### **Agency Contact**

Questions and comments related to this rule may be directed to:

Amy Bruner Zimmerman  
Dept. of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708–8911  
Telephone (608) 224–5017  
E–Mail: [datcpBLBW@wisconsin.gov](mailto:datcpBLBW@wisconsin.gov)

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

This rule implements the “buy local” grant program created under s. 93.48, Stats., by 2007 Wisconsin Act 20 (biennial budget act). Under s. 93.48, Stats., the Department of Agriculture, Trade and Consumer Protection (“DATCP”) is authorized to award grants for projects designed to increase local purchases of Wisconsin agricultural products. The budget act appropriated \$225,000 for this grant program in the FY 2007–09 fiscal biennium.

This rule does all of the following:

- Authorizes DATCP to make grant awards and distribute grant funds appropriated for the “buy local” grant program.
- Spells out the procedures and criteria that DATCP will use to evaluate grant proposals, make grant awards and distribute grant payments.
- Spells out the purposes for which grant funds may be used, subject to the terms of the grant contract.

This rule is identical to the temporary emergency rule that DATCP adopted effective February 22, 2008, except for one minor difference noted below.

#### ***Statutes interpreted***

Section 93.48, Stats., and section 9103 (3i) of 2007 Wisconsin Act 20 (biennial budget act).

#### ***Statutory authority***

Sections 93.48 (1) and 93.07 (1), Stats., and section 9103 (3i) of 2007 Wisconsin Act 20 (biennial budget act).

#### ***Explanation of agency authority***

DATCP has general authority under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. Section 93.48 (1), Stats., specifically requires DATCP to adopt rules for the “buy local” grant program.

#### ***Related rules or statutes***

There are no directly related rules or statutes, other than those cited above. DATCP rules for the “buy local” grant program will be incorporated as a subchapter of ch. ATCP 161, Wis. Adm. Code (agricultural development and market promotion).

#### ***Rule content***

The “buy local” grant program is designed to increase local sales of Wisconsin agricultural products. The biennial budget act appropriated \$225,000 in grant funding for the FY 2007–09 fiscal biennium. This rule spells out grant procedures and criteria. Under this rule, the “buy local” grant program will focus mainly on food products, rather than other agricultural products such as timber, feed, fiber or nursery products (it may incidentally benefit those other products).

#### ***Grant Purposes***

Under this rule, DATCP may award grants for projects that are designed to increase the sale of Wisconsin food products to local purchasers. For example, DATCP may award grants for projects to create, expand, diversify or promote any of the following:

- Local food marketing systems and market outlets.
- Local food and cultural tourism trails.
- Production, processing, marketing and distribution of Wisconsin food products for sale to local purchasers.

#### ***Grant Limits***

Under this rule, no individual grant award may exceed \$50,000. DATCP may not make more than one grant award

to the same person in the same state fiscal biennium. Once DATCP makes a grant award, DATCP may make the actual grant payments over a contract period of up to 2 years. DATCP may extend the contract term for up to one additional year upon request.

#### ***Matching Requirement***

To qualify for a grant under this rule, a grant recipient must make a matching commitment equal to at least 33% of the grant amount. A matching commitment may include a commitment of capital, land, labor, equipment or cash related to the grant project. Under this rule, matching funds may include grant funds received from sources other than DATCP (this is a change from the temporary “emergency” rule that took effect on February 22, 2008).

#### ***Use of Grant Funds***

Under this rule, grant funds may be used to reimburse any of the following expenses if those expenses are a reasonable and necessary part of the grant project:

- Operating expenses, including expenses for salaries and wages, contract and consulting services, travel, supplies and public information.
- Real estate and equipment rental.
- The purchase of equipment whose full value is ordinarily depreciable within one year.
- Reasonable depreciation expense incurred, for capital equipment, during the term of the grant contract.

Grant funds may not reimburse any of the following expenses:

- Real estate purchases.
- Repayment of loans or mortgages.
- Rent or contract payments for time periods extending beyond the term of the grant contract.
- Equipment purchases, except for certain equipment purchases and depreciation expenses specifically authorized by this rule.
- Administrative or overhead costs that are not direct costs of the grant project.

#### ***Grant Proposals***

Under this rule, DATCP must issue at least one request for grant proposals in each state fiscal biennium (DATCP may issue more frequent requests, if it chooses to do so). The request for applications must describe the required form and content of grant proposals, and must specify a deadline for submitting grant proposals. Grant applicants must submit grant proposals to DATCP, in the manner prescribed by DATCP’s request for applications.

#### ***Grant Awards***

Under this rule, DATCP must evaluate grant proposals and issue its grant awards within 90 days after the grant application deadline. DATCP must clearly identify each award recipient, the amount of the award, and the purposes for which the award is given. DATCP must consider all of the following criteria when evaluating grant proposals and making grant awards:

- The extent to which a proposed project will increase local purchases of Wisconsin food products.
- Whether the proposal complies with DATCP’s request for proposals.
- Whether the proposed project meets the standards prescribed in this rule.
- The viability of the proposed project.



- Additional project benefits for Wisconsin agriculture or tourism.
- The management and technical qualifications of the grant applicant.
- The qualifications of the persons who will carry out the project.
- The financial capacity of the grant applicant to complete the project as proposed.
- The adequacy of the project plan and budget.
- Whether the grant proposal adequately identifies the nature of project expenses to be reimbursed under the proposed grant.

#### *Grant Contracts*

Under this rule, DATCP must enter into a grant contract with a grant recipient before distributing any grant funds to that recipient. The contract must spell out grant terms and conditions, including performance requirements, reporting requirements and payment terms.

#### *Grant Payments*

Under this rule, DATCP may distribute grant funds in one or more payments, based on documented progress toward completion of the grant project. The grant contract must describe payment terms and conditions. DATCP may require a grant recipient to file progress reports and submit expense documentation as necessary to support grant payments.

#### *Comparison with federal regulations*

The United States Department of Agriculture (USDA) administers a farmers' market promotion program. That program offers grants to help improve and expand domestic farmers markets, roadside stands, community-supported agriculture programs and other direct farmer-to-consumer marketing mechanisms.

USDA also provides food assistance programs for pregnant women, women with infants, children up to 5 years old, and seniors who are at nutritional risk. Those programs provide or promote fresh, locally grown foods to program participants.

#### *Comparison with rules in adjacent states*

Wisconsin's "buy local" program is the first state program of its kind in the nation. However, surrounding states provide various types and levels of support for local food systems. For example, Michigan's state procurement policy encourages purchases from local farmers and businesses. Iowa provides over \$3 million in annual funding for local food and sustainable agriculture programs at Iowa State University-Extension (Leopold Center).

#### **Initial Regulatory Flexibility Analysis**

The "buy local" grant program will benefit farmers, businesses and communities that participate in production, distribution or marketing of locally produced foods. Grant recipients will benefit directly, while others will benefit indirectly from the creation of stronger local food networks and systems. This rule will establish standards and procedures for the "buy local" grant program to ensure that the program is effective and accountable.

#### **Fiscal Estimate**

This rule will have a fiscal impact on DATCP operations. Under this rule, DATCP must issue at least one request for grant proposals in each state fiscal biennium for which funding is available. DATCP staff must review grant applications, recommend grant awards, administer grants,

and ensure compliance with applicable requirements. DATCP staff will also provide technical assistance to grant recipients, as appropriate.

Program administration will occupy at least 2.0 FTE staff in DATCP's Division of Agricultural Development (this does not include legal, managerial, DATCP central accounting, or other indirect staff support). The combined total cost for those 2.0 FTE staff will be \$147,000 per year, including salary, fringe benefits and support costs (there will be a smaller proportionate cost for the remainder of the current fiscal year). The biennial budget act authorized 1.0 new FTE staff position, including staff funding of \$42,700 GPR for the current fiscal year and \$64,100 GPR for FY 2008-09. In the short term, DATCP will try to fill remaining staffing needs by shifting current staff from other agricultural development programs.

The budget act also provided funding (but no staff positions) for training, marketing, data tracking and information technology for the "buy local" program. Funding for those purposes is \$110,000 GPR in the current fiscal year and \$165,000 in FY 2008-09.

## **Notice of Hearing**

### **Commerce**

#### *Fee Schedule, Ch. Comm 2*

#### *Licenses, Certifications and Registrations, Ch. Comm 5*

#### **CR 08-039**

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.19 and 145.08, Stats., the Department of Commerce will hold a public hearing on proposed rules under chapters Comm 2 and 5 relating to program revenue fees.

#### **Hearing Information**

The public hearing will be held as follows:

#### **Date and Time:**

**May 28, 2008**

Wednesday

10:00 a.m.

#### **Location:**

Conference Room 3B

Thompson Commerce Center

201 W. Washington Avenue

Madison

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

#### **Submission of Written Comments**

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until June 6, 2008, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

#### **Copies of Proposed Rule**

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings

Division Web site at [www.commerce.wi.gov/SB/](http://www.commerce.wi.gov/SB/). Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, or Email at [roberta.ward@wisconsin.gov](mailto:roberta.ward@wisconsin.gov), or at telephone (608) 266–8741 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

### Agency Contact

Robert DuPont, Program Development Bureau Director, [robert.dupont@wisconsin.gov](mailto:robert.dupont@wisconsin.gov), (608) 266–8982

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

### Analysis Prepared by Department of Commerce

#### *Statutes interpreted*

Sections 101.19 and 145.08, Stats.

#### *Statutory authority*

Sections 101.19 and 145.08, Stats.

#### *Related statute or rule*

None

#### *Explanation of agency authority*

Chapters 101 and 145, Stats., grant the department general authority for the purpose of protecting public health, safety and welfare by establishing standards and regulatory oversight programs for the construction and maintenance of buildings, structures and dwellings and their components. These programs are administered by the Safety and Buildings Division. Sections 101.19 and 145.08, Stats., grant the department authority to promulgate rules to fix and collect fees that reflect the cost of providing these programs.

#### *Summary of proposed rules*

The Division of Safety and Buildings within the Department of Commerce is responsible for administering and enforcing safety and health rules relating to the construction and inspection of dwellings, public buildings and places of employment. In the administration and enforcement of those rules, the Department provides numerous services such as plan examination, inspection and certification. The Department, by rule promulgated under chapter 227 of the Wisconsin Statutes, is required to fix and collect fees which should, as closely as possible, equal the cost of providing those services.

Most of the fees charge by the Division of Safety and buildings are specified in chapter Comm 2. Additional fees for licenses, certification and registration are specified in chapter Comm 5. Many of the fee increases proposed fall under the scope of chapter Comm 2 and some of the fees are regarding chapter Comm 5.

The proposed rules contain fee increases for the following program areas: amusement rides and ski tows; boilers, gas systems and mechanical refrigeration; commercial buildings; elevators and lifting devices; plumbing systems plan review; public swimming, water attractions and associated slides; private onsite wastewater treatment system plan and product review; soil erosion/stormwater management; 1&2 family dwellings and manufactured homes/housing; rental weatherization, and licenses certifications and registrations.

The proposed changes are necessary in order to bring revenues more in line with the costs of providing the services in each program area. The fee increases proposed would result in an overall increase in revenue of 18% and provide

sufficient revenue for a 4 year period. Some fees would decrease (e.g., certain amusement ride program fees), and not all fees within program areas for which fee increases are proposed would increase. The fee increases proposed range from 6 percent to 700 percent. (In one case a \$25 fee changing to \$200.) Many fees contained in this proposal are based on a rate of \$80 per hour, except for amusement ride and ski tow activities, which are based on \$70 per hour.

In some program areas, the current fees would remain unchanged. The program area fees that are not being changed include: electrical, mine inspection, permit to operate fees in boiler and elevators, certain licensing fees. A general fee increase last occurred in September 2000, except for POWTS– and UDC–related fees, which were last updated in 1992.

#### *Amusement Rides*

The plan examination fee for new amusement ride tramways, and the fee for the review of engineering analysis and test data associated with the acceptance of amusement rides and bungee jumping sites, would increase from \$220 to \$280, a 27 percent increase.

Fees for the periodic inspection of amusement rides would increase 11 percent overall.

The fee for the periodic inspection of bungee jumping sites would be charged according to s. Comm 2.20 (1) (f), Inspection of Class 2 amusement rides, thereby decreasing the fee from \$800 to \$250.

The fee for the annual registration of all amusement rides would increase from \$50 to \$55, a 10 percent increase.

#### *Passenger Ropeways*

Fees for the inspection of passenger ropeways, indicated in Table 2.21–2, would decrease by 29 percent.

Plan examination fees for passenger ropeways, indicated in Table 2.21–1, would remain unchanged.

The fee for a permit to operate a passenger ropeway would remain unchanged at \$35.

#### *Boilers, Gas Systems, and Mechanical Refrigeration*

Pressure vessel inspection fee increases would range from 33 to 58 percent.

Inspection fees for boilers would generally increase 50 percent.

The fee for plan review of gas systems would increase from \$200 to \$300, a 50 percent increase; the inspection fee for gas systems would increase from \$250 to \$400, a 60 percent increase.

The plan review, initial inspection and period inspection fees for anhydrous ammonia systems and storage facilities would generally increase 50 percent.

Mechanical refrigeration inspection fees would generally increase 50 percent.

Anhydrous ammonia system nurse tank periodic inspection fee increases would range from 31 to 100 percent.

The fee for a permit to operate a boiler, pressure vessel, anhydrous ammonia system and mechanical refrigeration would remain unchanged at \$35.

#### *Commercial Buildings*

The fees for building plan review under ch. Comm 61 would increase 6 percent overall. The proposed fees would range from \$300 to \$20,000 (where the Department conducts the inspection) or \$250 to \$18,000 (where a municipality conducts the inspection).

Plan review fees for building HVAC systems would increase 9 percent overall. The proposed fees would range from \$180 to \$13,500 (Department inspection) or \$150 to \$12,100 (municipal inspection).

Plan review fees for fire systems would increase 6 percent overall. The proposed fees would range from \$50 to \$7,100 (Department inspection) or \$30 to \$6,400 (municipal inspection).

#### *Elevators and Lifting Devices*

The current basis for determining the fee for an elevator plan review, initial inspection and period inspection includes the number of landings of the elevator unit. This basis would be removed and the basis would become the type of elevator unit, as follows:

- Traction elevator, other elevator driving machines;
- Hydraulic elevator;
- Dumbwaiter, platform lift, stair chair lift, special application elevator;
- Escalator, moving.

Current fee amounts for plan review and initial inspection in Table 2.15–1 and for periodic inspection in Table 2.15–2 would be combined into Table 2.15.

Current fee amounts charged for elevator plan review and initial elevator inspection fees would generally increase 57 percent.

Current fee amounts charged for elevator periodic inspection would generally increase 30 percent.

Current fee amount for a permit to operate an elevator would remain at \$35.

#### *Plumbing Systems Plan Review*

Current fee amounts for plan review of plumbing systems would generally increase by 27 percent.

Current fee amounts for plumbing product approval would increase by 25 percent.

#### *Public Swimming Pools, Water Attractions and Associated Slides*

Current fee amounts for plan review and inspection of public swimming pools, water attractions and slides would increase 100 percent.

#### *POWTS (Private Onsite Wastewater Treatment Systems) Plan and Product Review*

Current fee amounts for plan review of POWTS would generally increase by 50 percent.

The current fee for a sanitary permit issued under Comm 2.67 (1) (a) would increase from \$116 to \$141, a 22 percent increase.

Current fee amounts for POWTS product approval would increase by 25%.

#### *Rental Weatherization*

The current fee for a rental weatherization certification stamp would be increased from \$30 to \$40, a 33 percent increase.

#### *Soil Erosion/Stormwater Management*

The fee for filing a notice of intent (to disturb soil) would increase from \$25 to \$200, a 800 percent increase. The proposed fee would be the same as the NOI fee charged by the DNR.

#### *1&2 Family Dwellings and Manufactured Homes/Housing*

The Uniform Building Permit seal fee would increase from \$25 to \$40, a 60 percent increase.

The Wisconsin Insignia fee (utilized for manufactured dwellings) would remain at \$25.

Fees for the plan review and inspection of manufactured home communities would remain unchanged.

Manufactured home titling fees and manufactured home community permit fees would remain unchanged.

#### *License, Certification and Registration*

Where the current application fee is \$10, the fee would generally increase to \$15, a 50 percent increase.

Where the current examination fee is \$20, the fee would generally increase to \$25, a 25 percent increase.

The license fee for Commercial Building and UDC inspectors would increase from \$30 to \$40, a 33 percent increase.

The business certification fee for dwelling contractors would increase by \$15, a 75 percent increase.

The individual certification fee for dwelling contractor qualifiers would increase by \$30, a 100 percent increase.

The certification fee for a manufactured home installer would increase from \$100 to \$160, a 60 percent increase.

The license, application and certification fees for a soil tester would increase from \$25 to \$35, \$50 to \$75 and \$240 to \$300 respectively.

The registration fee for a POWTS maintainer would increase from \$60 to \$90, a 50 percent increase.

The certification fee for an HVAC contractor would increase from \$100 to \$160, a 60 percent increase.

#### *Miscellaneous*

The miscellaneous fees indicated in s. Comm 2.02 (e.g., photocopying fees, plan reproduction fees) would increase 20%.

The hourly fee charged for miscellaneous inspections during regular work hours would increase from \$60 to \$80, a 25 percent increase.

#### *Comparison with federal regulations*

An Internet–based search in the *Code of Federal Regulations and the Federal Register* did not identify any existing or proposed federal regulations that address these topics.

#### *Comparison with rules in adjacent states*

The following is a comparison of some of the fees proposed with fees charged in other states. The methodology of charging fees varies, making a meaningful comparison more difficult to conduct. The hourly rate of \$80 per hour proposed by Commerce is compared with the hourly rate charged in other states. Comparisons are also made between the permit–to–operate fees.

**Illinois.** Illinois does not provide for the state–wide regulation of commercial or residential building construction.

Illinois provides for the statewide regulation of elevators. Illinois requires payment of a \$75 annual certificate of operation for an elevator. Wisconsin’s elevator permit to operate is also required annually and the fee is \$35. Illinois does not provide plan review or inspection services; the latter of these services is provided by licensed, private parties.

Illinois also provides for statewide regulation of boilers. For example, a certificate to operate is required annually in Illinois and the cost is \$75. Again, Wisconsin also requires such a permit annually and the cost is \$35. Regular inspections are provided by state inspectors (and also insurance inspectors). The maximum fee proposed by Wisconsin for the inspection of a pressure vessel is \$140; the maximum in Illinois for such an inspection is \$160.

**Iowa.** Iowa fees for building plan review and inspection are based on the estimated construction costs. An hourly rate

for building inspection is indicated at \$206 for one hour on–site, and \$374 for an inspection lasting between 5 and 6 hours.

Iowa’s fee for an annual elevator permit is \$50; Wisconsin’s fee for an annual elevator permit is \$35. Iowa charges an hourly rate of \$100 for consultative elevator inspections.

**Minnesota.** Minnesota has an hourly rate of \$45 per hour for building inspections and some elevator inspections. This rate is 15 years old and the costs of building inspection are significantly supplemented by a surcharge placed on municipal building permit revenue. The hourly rate does not include costs related to code development and does not include costs for management other than direct supervision. All code development and management costs are included in Wisconsin’s proposed hourly rate.

Minnesota’s hourly rate for boiler inspection is \$80. The annual registration fee for a boiler in Minnesota is \$10; the Wisconsin fee for a boiler permit to operate is \$35. The Minnesota fee for the inspection of a boiler inaccessible or accessible for internal inspection is \$55; a fee of \$60 would be charged by Wisconsin for an external inspection of a heating boiler.

**Michigan.** Michigan charges an hourly rate of \$100 per hour for various services (e.g., elevator hourly inspection rate and hourly building plan review rate). Michigan’s annual certificate of operation fee for an elevator is \$35, the same as Wisconsin’s annual elevator permit–to–operate fee.

#### **Summary of factual data and analytical methodologies**

The majority of the fees charged by the Safety and Buildings Division have not been increased since 2000 and some fees have not been increased since 1992. The proposed changes are necessary in order to bring revenues in line with the cost of providing the services in each program area. It is estimated that the changes will increase total program revenues by 18 percent and provide a sufficient revenue flow for a 4–year period. The department is statutorily directed to establish and collect fees which should, as closely as possible, equal the cost of providing those services.

The department utilizes advisory councils in analyzing and developing proposed revisions to the Fee Code. The councils involved in the review of the proposed rules were the Amusement Ride Council, Boiler and Pressure Vessel Code Council, Commercial Building Code Council, Conveyance Safety Council, Manufactured Home Council, Multifamily Dwelling Code Council, Plumbing Code Council, Pool Council, POWTS Code Council and Uniform Dwelling Code Council. These councils involve a variety of organizations whose memberships include small businesses and municipal staff. The department utilizes these councils to gather information on potential impacts in complying with the administrative requirements of this proposal. A responsibility of council members is to bring forth concerns their respective organizations may have with the requirements, including concerns regarding economic impacts. (Copies of the council meetings summaries are on file in the Safety and Building Division.)

#### **Analysis and supporting documents used to determine effect on small business**

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

In most cases, the annual fees associated with building equipment that require businesses to obtain permits to operate

or registrations are not proposed to be increased. The majority of the fee increases relate to division services, such as plan review and inspection, which most businesses would utilize on an infrequent basis. These types of fees would not be significant to the overall operation of the business in comparison to overall expenses.

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

#### **Initial Regulatory Flexibility Analysis**

##### ***Types of small businesses that will be affected by the rules***

The rules will affect any business that pays fees to the Safety and Buildings Division for the Division’s services such as plan review, inspection, permits to operate, registrations, licenses and certifications. The services where fee adjustments are proposed involve amusement rides, boilers, gas systems, mechanical refrigeration, commercial buildings, elevators, plumbing, swimming pools, private onsite wastewater treatment systems, rental weatherization, soil erosion and stormwater management, 1&2 family dwellings and manufactured homes.

Some examples of businesses that pay fees for division services include, architects, engineers, and contractors.

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

The proposed changes to chapters Comm 2 and 5 do not impose any additional reporting, bookkeeping or other procedures for compliance.

##### ***Types of professional skills necessary for compliance with the rules.***

The proposed changes to chapters Comm 2 and 5 do not any type of professional skills for compliance.

##### ***Rules have a significant economic impact on small businesses?***

No.

#### **Environmental Analysis**

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

#### **Fiscal Estimate**

##### **Summary**

The Department estimates that current, annual revenues are \$15,814,400. Annualized costs for the period FY09 – FY12 (July 1, 2008 – June 30, 2012) are estimated at \$17,659,000. In order to generate sufficient revenue to cover these anticipated costs, the Department proposes to increase fees such that annual revenue generated during the four–year period would be \$18,730,100, a 18.44% increase, and would cover anticipated costs during that time. Costs and revenue have been estimated for each of the Division’s programs, such that each program is covering its own costs. These programs include:

- Amusement Rides
- Passenger Ropeways
- Boilers, Gas Systems, Mechanical Refrigeration Systems
- Commercial Buildings

Elevators  
 Plumbing  
 Swimming Pools  
 Private Onsite Wastewater Treatment Systems  
 Rental Weatherization  
 Soil Erosion/Stormwater Management  
 1 & 2 Family Dwellings/Manufactured Homes

**State fiscal impact**

Increase existing revenues.

**Local fiscal impact**

None

**Fund sources affected**

PRO

**Affected ch. 20 appropriations**

Section 20.143 (3) (j), Stats.

**Long-range fiscal implications**

No long range fiscal implications are anticipated at this time.

**Notice of Hearing****Commerce**

**Financial Resources for Businesses and Communities,  
 Chs. Comm 104—  
 CR 08-037**

NOTICE IS HEREBY GIVEN that pursuant to section 560.125 (5m) of the Statutes, the Department of Commerce will hold a public hearing on proposed rules in chapter Comm 131, relating to diesel truck idling reduction grants, and affecting small business.

**Hearing Information**

The public hearing will be held as follows:

<b><u>Date and Time:</u></b>	<b><u>Location:</u></b>
<b>May 27, 2008</b>	Thompson Commerce Center
Tuesday	Third Floor, Room 3B
9:30 a.m.	201 West Washington Avenue
	Madison, Wisconsin

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266-0797 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

**Submission of Written Comments**

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e-mail. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until June 2, 2008, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E-mail comments should be sent to srockweiler@commerce.state.wi.us. If e-mail submittal is not possible, written comments may be submitted

to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

**Copies of Proposed Rule**

The proposed rules and an analysis of the rules are available on the Internet by entering "Comm 131" in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Tom Coogan at the Department of Commerce, Bureau of Entrepreneurship, P.O. Box 7970, Madison, WI 53707-7970, or at [Thomas.Coogan@Wisconsin.gov](mailto:Thomas.Coogan@Wisconsin.gov), or telephone (608) 267-9214 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

**Agency Contact Person**

Tom Coogan, Wisconsin Department of Commerce, Bureau of Entrepreneurship, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 267-9214; e-mail [Thomas.Coogan@wisconsin.gov](mailto:Thomas.Coogan@wisconsin.gov)

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or at [cdunn@commerce.state.wi.us](mailto:cdunn@commerce.state.wi.us).

**Analysis Prepared by Dept. of Commerce****Statutes interpreted**

Section 560.125

**Statutory authority**

Section 560.125 (4) (f) and (5m), Stats.

**Explanation of agency authority**

Section 560.125 (5m) of the Statutes requires the Department to promulgate rules for administering a diesel truck idling reduction grant program under section 560.125 of the Statutes. Section 560.125 (4) (f) of the Statutes authorizes the Department to impose conditions on the receipt of grants issued in this program.

**Related statute or rule**

Chapter Comm 48 regulates petroleum products, including diesel fuels, in Wisconsin.

**Summary of rule**

The proposed rules would make chapter Comm 131 consistent with the changes that were made to section 560.125 of the Statutes by 2007 Wisconsin Act 20. Prior to this Act, and under the current rules that have been in effect since July 1, 2006, (1) an approved applicant paid 30 percent of the eligible costs for each idling reduction unit, unless the Department required payment of a higher percentage; (2) the Department annually funded units for a limited percentage of an applicant's truck tractors, and the percentage decreased as the number of owned tractors increased from 1 to 500; (3) the Department annually funded up to the greater of either 25 units or units for 5 percent of the owned truck tractors, for an applicant who owned and operated from 501 to 2500 truck tractors; and (4) the Department annually funded units for up to 3 percent of the owned truck tractors, for an applicant who owned and operated more than 2500 truck tractors.

Under the changes enacted in 2007 Act 20, (1) the applicant must pay at least 50 percent of the eligible costs for each idling reduction unit, (2) the 25-unit limit is now 30 units, (3) the limit for more than 2500 truck tractors is now the greater of either 3 percent or 125 units, and (4) the annual limit on the number of units that an applicant could receive funding for, which was applied during each of the first two years of the

program, is now the limit for the period from July 1, 2007, to June 30, 2011.

### ***Comparison with federal regulations***

Various federal regulations address efforts to decrease emissions of air contaminants or to decrease the use of energy, by motor vehicles.

Particularly pertinent to the proposed rules is a regulation published by the U.S. Environmental Protection Agency (EPA) in the January 18, 2001, *Federal Register*, under Title 40, Parts 69, 80, and 86, in the *Code of Federal Regulations*. Through this regulation, the EPA has established a comprehensive national control program for reducing particulate matter and nitrogen–oxide emissions from new heavy–duty diesel engines by 90 percent and 95 percent below current standard levels, respectively. This national program includes stringent, new emission standards that took effect in model year 2007, and a corresponding significant reduction of the level of sulfur in diesel fuels, which is needed to enable engine components to consistently meet the emission standards.

Extensive federal efforts related to this national program are also underway for reducing these emissions from existing diesel engines *by reducing diesel engine idling* – such as (1) the EPA’s National Clean Diesel Campaign, which is aggressively promoting diesel idling reduction nationwide; (2) the National Transportation Idle–Free Corridors project, as sponsored by the EPA’s SmartWay™ Transport Partnership, which aims to eliminate all unnecessary long–duration diesel truck and locomotive idling at strategic points along major transportation corridors; (3) the Clean Cities Program in the U.S. Department of Energy (DOE), which includes addressing research and development for diesel idling reduction technologies, and corresponding funding of national and state–level demonstration projects; (4) the *National Idling Reduction Network News*, as published monthly by the DOE’s Argonne National Laboratory, which summarizes current events and developments nationwide relating to diesel idling reduction; and (5) the Congestion Mitigation and Air Quality Improvement Program in the U.S. Department of Transportation’s Federal Highway Administration, which funds retrofitting of heavy–duty diesel engines that results in reducing nitrogen–oxide emissions in air–quality–related nonattainment or maintenance areas. In addition, for fiscal year 2008, Congress appropriated funds for the first time under the federal Energy Policy Act of 2005 to help reduce emissions from heavy–duty diesel engines. Through the National Clean Diesel Campaign, the EPA can award grants totaling \$49.2 million in fiscal year 2008, to states and other eligible entities to build diesel emission reduction programs across the country. According to the EPA, the emissions from the millions of diesel engines already in use are linked to thousands of premature deaths, hundreds of thousands of asthma attacks, millions of lost work days, and numerous other health impacts every year.

### ***Comparison with rules in adjacent states***

No adjacent state has a grant program for purchasing and installing diesel truck idling reduction equipment. However, under corresponding statutory criteria, Minnesota began providing loans in 2005 that can be used for this purpose, through its Small Business Environmental Improvement Loan Program. Related efforts in Iowa, Illinois and Michigan include (1) sponsoring of workshops in Michigan and Illinois, in conjunction with the EPA’s Midwest Clean Diesel Initiative; and (2) enactment of legislation in Illinois in June

2006 that prohibits diesel vehicles of 8000 pounds or more from idling within the metropolitan areas of Chicago and East Saint Louis, for more than 10 minutes within any 60–minute period, except for various exemptions. Due to the availability of the EPA grants described above, the adjacent States are expected to begin implementing grant programs for diesel idling reduction within the next year or two.

### ***Summary of factual data and analytical methodologies***

The data and methodology for developing the proposed rules consisted of incorporating the changes that are needed to achieve consistency with the changes which were made to section 560.125, Stats., by Sections 3564p to 3564t of 2007 Wisconsin Act 20.

### ***Analysis and supporting documents used to determine effect on small business***

The Department considered the applications and resulting grants that were processed during the initial, 2007, funding cycle of the program.

### **Initial Regulatory Flexibility Analysis**

#### ***Summary***

Small businesses which own diesel truck tractors and which apply for grants under chapter Comm 131, as amended by the proposed rules, may receive a smaller benefit than they would have received without enactment of 2007 Wisconsin Act 20. The proposed rules are not expected to impose any significant costs on small businesses, because the rules only address how the Department will award grant funds for diesel truck idling reduction equipment.

#### ***Types of small businesses that will be affected by the rules***

Owners and operators of small fleets of diesel trucks who choose to apply for the grant funds, and vendors who sell or install the idling reduction equipment addressed by the grant funds.

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

No new reporting, bookkeeping or other procedures would be required for complying with the proposed rules.

#### ***Types of professional skills necessary for compliance with the rules***

No new professional skills would be required for complying with the proposed rules.

#### ***Rules have a significant economic impact on small businesses?***

No.

### **Environmental Analysis**

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

### **Fiscal Estimate**

#### ***Summary***

The proposed rules are not expected to have any significant fiscal effect on the Department, because they would only modify how the current grant funding is allocated to eligible applicants.

The proposed rules are not expected to impose any significant costs on the private sector, because the rules only address how the Department will award grant funds for diesel truck idling reduction equipment.

**State fiscal impact**

None

**Local fiscal impact**

None

**Long–range fiscal implications**

None known.

**Notice of Hearing**  
**Financial Institutions – Corporate and Consumer Services**  
**CR 08–041**

NOTICE IS HEREBY GIVEN That pursuant to ss. 66.0420 (3) (f) 4., 66.0420 (13) (a) and 227.11 (2), Stats., and interpreting s. 66.0420, Stats., the Wisconsin Department of Financial Institutions, Division of Corporate and Consumer Affairs will hold a public hearing to consider a rule to create chapter DFI–CCS 20 relating to video service franchise.

**Hearing Information**

The hearing will be held:

<b>June 3, 2008</b>	Dept. of Financial Institutions
1:00 p.m.	345 W. Washington Avenue
	5th Floor
	Madison, Wisconsin

**Submission of Written Comments**

Written comments may be sent to Mark Schlei, Deputy General Counsel, Wisconsin Dept. of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708–8861, (608) 267–1705, e–mail: [mark.schlei@dfi.state.wi.us](mailto:mark.schlei@dfi.state.wi.us). Written comments must be received by the conclusion of the department’s hearing regarding the proposed rule.

**Copies of Proposed Rule**

A copy of the proposed rule, hearing notice and fiscal estimate may be obtained at the department’s website, [www.wdfi.org](http://www.wdfi.org) or by contacting Mark Schlei, Deputy General Counsel, Wisconsin Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708–8861, tel. (608) 267–1705, e–mail [mark.schlei@dfi.state.wi.us](mailto:mark.schlei@dfi.state.wi.us).

**Agency Contact Person**

For questions regarding the agency’s internal processing of the proposed rule:

Contact Mark Schlei, Deputy General Counsel, Wisconsin Department of Financial Institutions, Office of the Secretary, 345 W. Washington Avenue, 5<sup>th</sup> Floor, P.O. Box 8861, Madison, WI 53708–8861, tel. (608) 267–1705, e–mail [mark.schlei@dfi.state.wi.us](mailto:mark.schlei@dfi.state.wi.us).

For substantive questions on the rule:

Contact Cheryll Olson–Collins, Administrator, Wisconsin Department of Financial Institutions, Division of Corporate and Consumer Affairs, P.O. Box 7846, Madison, WI 53708–7846, tel. (608) 266–6810, e–mail [cheryll.olsoncollins@dfi.state.wi.us](mailto:cheryll.olsoncollins@dfi.state.wi.us) or Ray Allen, Deputy Administrator, Wisconsin Department of Financial

Institutions, Division of Corporate and Consumer Affairs, P.O. Box 7846, Madison, WI 53708–7846, tel. (608) 264–7950, e–mail [ray.allen@dfi.state.wi.us](mailto:ray.allen@dfi.state.wi.us).

**Analysis Prepared by the Dept. of Financial Institutions, Division of Corporate and Consumer Affairs**

**Statute interpreted**

s. 66.0420, Stats.

**Statutory authority**

66.0420(3)(f)4., 66.0420(13)(a) and 227.11(2), Stats.

**Related statute or rule**

None.

**Explanation of agency authority**

Pursuant to s. 66.0420 (13) (c), Stats., the department shall enforce s. 66.0420 except sub. (8).

**Summary of proposed rule**

The objective of the rule is to create ch. DFI–CCS 20. Pursuant to s. 66.0420 (13) (a), Stats., the department shall promulgate rules for determining whether an applicant is legally, financially, and technically qualified to provide video service, and may promulgate rules interpreting or establishing procedures for s. 66.0420, Stats. The purpose of this rule is to set forth certain matters regarding definitions, filings, fees and reports, certificates, maps, video franchise area descriptions, amendments to maps and video franchise area descriptions, qualifications, and proceedings and hearings.

**Comparison with federal regulations**

Comparable franchise application processes and proceedings are set forth in 47CFR76.

**Comparison with rules in adjacent states**

Illinois has enacted video franchise area legislation but no rules regarding this legislation.

**Summary of factual data and analytical methodologies**

The department reviewed the legislative findings of 66.0420, Stats., reviewed the video service franchise statutes and rules of other states that have adopted similar legislation, contacted video service franchise regulators in other states, and applied its own experience in regulation of financial industries generally.

**Initial Regulatory Flexibility Analysis**

The rule does not have a significant economic impact on small business. Mandates and proceedings addressed by the rule are the result of and set forth in 2007 Wisconsin Act 42 and ch. 227, subch. III, and not the rule. The rule largely addresses filing matters or requests information otherwise already prepared for other agencies.

**Fiscal Estimate**

The rule creates new appropriations, increases existing revenues, and increases costs that may not be possible to absorb within the agency’s budget. The rule has an indeterminate effect on local government cost.

**Notice of Hearing**  
**Government Accountability Board**  
**EmR0803**

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting Subchapter I of Chapter 5, Stats., the Government Accountability Board will hold a public hearing to consider adoption of an emergency rule to repeal sections Eth 3.01 and 3.04, and amend section

EIBd 10.01, Wis. Adm. Code (Renumbered to ss. GAB 21.01, 21.04 and 20.01, effective 4-1-08). The rules relate to processing complaints with the former State Ethics Board and with the former State Elections Board.

### Hearing Information

The hearing will be held:

**June 2, 2008** Government Accountability Board  
9:30 a.m. 17 West Main Street  
Madison, Wisconsin

### Submission of Written Comments

Written comments may be submitted to the Government Accountability Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701-2973; (elections.state.wi.us)

### Agency Contact Person

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### Analysis Prepared by the Government Accountability Board

#### Statutory authority

Sections 5.05 (1) (f), 5.93, and 227.11 (2) (a), Stats.

#### Statutes interpreted

Subchapter I of Chapter 5, Stats.

#### Explanation of agency authority

This rule repeals rules sections Eth 3.01 and 3.04, and amends section EIBd 10.01, which would have interpreted Subchapter I of Chapter 5 of the Wisconsin Statutes, as amended by 2007 Wisconsin Act 1. Those rules prescribe procedures related to processing complaints with the former State Ethics Board and with the former State Elections Board. Under 2007 Wisconsin Act 1, those agencies have merged to become the Government Accountability Board. The complaint procedure under ss. Eth 3.01 and 3.04 no longer applies to complaints filed with the Government Accountability Board under 2007 Wisconsin Act 1 and the complaint procedure under EIBd ch.10 no longer applies to campaign finance complaints. The previous complaint procedure of the former Ethics Board, and the previous campaign finance complaint procedure of the Elections Board is inconsistent with the new Government Accountability Board complaint procedure, which is now provided by statute rather than administrative rule. Therefore, those rules need to be repealed.

#### Related statute or rule

Sections 11.60, 13.69, and 19.535, Stats., relating to the enforcement of the campaign finance, lobbying and ethics laws.

#### Plain language analysis

This rule repeals rules sections Eth 3.01 and 3.04, and amends section EIBd 10.01, (which would have interpreted Subchapter I of Chapter 5 of the Wisconsin Statutes, as

amended by 2007 Wis. Act 1), in anticipation of a future rule governing campaign finance, ethics and lobbying complaints under the new law enacted in 2007 Wis. Act 1.

#### Comparison with federal regulations

Considering that this rule repeals two existing former Ethics Board rules and effectively repeals a portion of a rule of the former Elections Board, comparison with existing federal regulations is inapposite. Federal law does enforce violations of campaign finance, lobbying and ethics laws at the federal level only.

#### Comparison with rules in adjacent states

The States of Illinois, Iowa, Michigan and Minnesota have not enacted legislation comparable to 2007 Wisconsin Act 1 and have not sought the repeal of enforcement provisions comparable to those included in this rule.

Given the purpose and tenor of this rule repealing administrative provisions, comparison with existing provisions of other states, as with a comparison to federal law, is inapposite.

#### Summary of factual data and analytical methodologies

Adoption of the rule was predicated on eliminating provisions of the former Ethics Board's and Elections Board's rules that were inconsistent with the provisions or intent of the new law merging those agencies into the new Government Accountability Board.

#### Analysis and supporting documents used to determine effect on small business

Preparation of an economic impact report is not required. The Government Accountability Board does not anticipate the repeal of the described provisions will have an economic impact.

#### Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

#### Fiscal Estimate

The creation of this rule has no fiscal effect.

#### Text of Proposed Rule

SECTION 1. Eth 3.01 and 3.04 are repealed.

SECTION 2. EIBd 10.01 is amended to read:

EIBd 10.01 Applicability. This chapter applies to complaints filed with the state elections board pursuant to ss.5.05(3), 5.06, ~~11.60(5)~~ and ~~11.66~~ 5.061, Stats., requesting the elections board to enforce the election ~~and campaign finance laws~~ and compliance with the Help America Vote Act. This chapter does not apply to complaints to challenge nomination papers or petitions which are filed under s.2.05 or 2.11.

### Notice of Hearing

### Workforce Development

### Family Supports, Chs. DWD 12-59

### CR 08-034

**Correction:** On page 35 of the 4-30-08 Register, a hearing notice is incorrectly labeled CR 08-029. The correct number is CR 08-034.



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## Submittal of Proposed Rules to the Legislature

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

**Workforce Development**

*Unemployment Insurance, Chs. DWD 100–150*

**CR 08–019**

A rule-making order revising chapter DWD 149, relating to disclosure of unemployment insurance records.

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## Rule Orders Filed with the Legislative Reference Bureau

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

### **Employment Relations Commission**

#### **CR 07-092**

A rule-making order revising section ERC 10.08, relating to increased filing fees.  
Effective 6-1-08.

### **Financial Institutions – General**

#### **CR 08-015**

A rule-making order creating chapter DFI-Gen 2, relating to small business enforcement discretion.  
Effective 7-1-08.

### **Natural Resources**

#### ***Air Pollution Control, Chs. NR 400—***

#### **CR 07-017**

A rule-making order creating chapter NR 433 and section 484.04 (11m), relating to the identification of sources subject to the Best Available Retrofit Technology (BART) requirements for visibility protection and the determination of BART for those sources.  
Effective 7-1-08.

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