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Questions, comments, or corrections should be directed to:

Bruce Hoesly (608) 266-7590
email: bruce.hoesly@legis.state.wi.us

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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade & 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

Corrections

EmR0812 – Rules adopted revising **s. DOC 332.19**, relating to the establishment of a sex offender registration fee to partially offset the costs of monitoring persons who are required to register as sex offenders.

Finding of Emergency

The department of corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is: 2007 WI Act 20, section 3132, amended s. 301.45 (10), Stats., in three ways which requires an immediate amendment of s. DOC 332.19.

First, the newly amended s. 301.45 (10), Stats., expands the persons whom the department of corrections may require to pay an annual sex offender registration fee. Previously, the department was limited to assessing the fee only against those persons who were required to register and who were in its custody or under its supervision as a person on probation, parole, or extended supervision. The new law permits the department to require all persons who are required to register as a sex offender to pay an annual fee.

Second, the new law limits the use of the collected sex offender fees to partially offset the costs of monitoring sex offenders. Previously, the department was authorized to use the collected fees to partially offset the costs of monitoring those persons on probation, parole, or extended supervision,

regardless of whether they were required to register as sex offenders.

Third, the legislature increased the maximum annual rate from \$50 to \$100. If the rule is not amended promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of monitoring persons who are required to register as sex offenders. This could result in a lessening of supervision due to budget limitations.

The purpose of the emergency rule is to amend the current rule to require all persons who are required to register as sex offenders under s. 301.45 to pay the annual fee which is used to partially offset the costs of monitoring registrants. The emergency rule also increases the annual rate to \$100. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of fees while permanent rules are being developed.

Publication Date: May 15, 2008
Effective Date: May 15, 2008
Expiration Date: October 12, 2008

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

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.

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
Extension Through: June 29, 2008

Insurance

EmR0817 – Rule adopted revising **Ch. Ins 3**, relating to long-term care plans including the long-term care partnership program qualifying policies and affecting small business.

Finding of Emergency

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

The State of Wisconsin will be implementing the Wisconsin Partnership Program effective January 1, 2009, the date approved by the federal government in accordance with the Department of Health and Family Services' application for participation. As part of the enabling statute as amended, the state requires that all insurance intermediaries receive specific training prior soliciting any long-term care products on or after January 1, 2009. In order to minimize the impact of the additional training, the proposed rule permits the training, if approved, to qualify for continuing education therefore, intermediaries can meet two training requirements simultaneously. For training to be approved and courses offered prior to January 1, 2009, the office needs to promulgate this rule to provide the guidelines necessary for creation and submission of training programs. Therefore the office must promulgate this rule as an emergency rule.

In addition, in order for insurers to offer products intended to qualify for the Wisconsin partnership program, such products shall be submitted to the office prior to use. The insurers must submit those products sufficiently in advance of January 1, 2009, so that there is time for review by the office and implementation time for the insurers. These changes include modifications to **s. Ins 3.455** including repealing and recreating the applicable definitions and modifying the conversion requirements; modifications to **s. Ins 3.46** including deletion of the blanket exemption for group long-term care products replaced with narrow exceptions, modification to the marketing and advertising requirements with notable new requirements for insurers and intermediaries to submit to OCI marketing and advertisement material prior to use, new group insurance requirements, modifications to the permissive limitations and exclusions, disclosures, replacement requirements, reporting requirements for insurers added regarding suitability; conversion modifications, incontestability and standards for marketing. The appendices to **s. Ins 3.46** have also been repealed and recreated and now include several reporting forms for tracking suitability, rescissions, claims denial, replacement and lapses by state to be filed by insurers. As noted above, the major addition to **s. Ins 3.46** is the intermediary training requirement as required by **s. 628.348 (1), Stats.** Finally, the changes also include a new section, **s. Ins 3.465** and appendices, related to the Wisconsin Partnership Program that is to be available beginning January 1, 2009.

A combined rule hearing will be held for both the emergency and permanent rule on June 16, 2008.

Publication Date: June 2, 2008
Effective Date: June 3, 2008
Expiration Date: October 3, 2008
Hearing Date: June 16, 2008

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

Pharmacy Examining Board

EmR0815 – Rule adopted revising **Ch. Phar 13**, relating to the regulation of wholesale prescription drug distributors.

Finding of Emergency

The Board has made a finding of emergency. The Board finds that failure to have the proposed rules in effect on June 1, 2008, the effective date of the applicable provisions of 2007 Wisconsin Act 20, will create a danger to the public health, safety and welfare, by disrupting the wholesale distribution of prescription drugs in the state of Wisconsin.

Publication Date: May 29, 2008
Effective Date: June 1, 2008
Expiration Date: October 29, 2008

Public Instruction (5)

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

4. **EmR0813** – A rule is adopted revising **Ch. PI 37**, relating to grants for national teacher certification and master educator licensure.

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 new provisions modifying the grants for the national teacher certification program under 2007 Wisconsin Act 20, the biennial budget bill, took effect October 27, 2007. In order to establish the new application criteria and procedures to award grants to eligible applicants in the 2007–08 school year, emergency rules must be in place as soon as possible.

Publication Date: May 17, 2008
Effective Date: May 17, 2008
Expiration Date: October 14, 2008

5. **EmR0816** – A rule adopted revising **Ch. PI 30**, relating to state special education aid for certain pupil services personnel.

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 new provisions under 2007 Wisconsin Act 221 modifying the percentage of the salaries of licensed school nurses, licensed school social workers, licensed school psychologists, and licensed school counselors that are eligible for state aid reimbursement first applies to state aid distributed in the 2008–09 school year. In order to establish instructions this spring as to how school districts are to account for these pupil services staff on special education claim forms, rules must be in place as soon as possible.

Publication Date: May 30, 2008
Effective Date: May 30, 2008
Expiration Date: October 27, 2008
Hearing Date: July 14, 2008

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
Hearing Date: June 26, 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
Extension Through: July 29, 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. **EmR0814** – Rule adopted repealing EmR0807 affecting s. **DWD 56.04**, 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 implemented the child care enrollment underutilization emergency rule as a cost-saving measure effective March 30, 2008. 2007 Wisconsin Act 226 provides \$18.6 million to address the fiscal year 2007-08 Wisconsin Shares funding shortfall. The Governor's veto message

directs the Department of Workforce Development to "suspend the current attendance-based rule for the remainder of fiscal year 2007-08." The Department is repealing the enrollment underutilization emergency rule and will be withdrawing the corresponding proposed permanent rule.

Publication Date: May 25, 2008
Effective Date: May 25, 2008
Expiration Date: October 22, 2008
Hearing Date: June 27, 2008

Scope Statements

Accounting Examining Board

Subject

Revises Chapter Accy 7, relating to certified public accountant education requirements and Chapter Accy 8, relating to endorsement qualifications so as to allow the use of mutual recognition agreements or evaluation services in the evaluation of the educational qualifications of applicants.

Objective of the Rule

To allow the use of mutual recognition agreements or evaluation services in the evaluation of the educational qualifications of applicants.

Policy Analysis

Existing rules relating to educational requirements that applicants need to acquire to obtain licensure can be found in ch. Accy 7. Existing rules relating to endorsement qualifications can be found in ch. Accy 8.

Statutory Authority

Sections 15.08 (5) (b), 15.405 (1), 227.11 (2) and 442.01, Stats.

Entities Affected by the Rule

Applicants for Certified Public Accountant licensure.

Comparison with Federal Regulations

This is not an area which is regulated by federal law or is subject to any proposed federal legislation. The standards for state licensure are regulated by each state.

Estimate of Time Needed to Develop the Rule

100 hours.

Barbering and Cosmetology Examining Board

Subject

Revises Chapters BC 8 and 9, creating continuing education requirements for renewal of a credential for licensees within the jurisdiction of the Barbering and Cosmetology Examining Board.

Policy Analysis

Existing rules relating to the licensure and professional requirements for licensees can be found in Chapters BC 1 to 10.

Statutory Authority

Sections 15.08 (5) (b), 15.405 (17), 227.11 (2) and 454.12, Stats.

Entities Affected by the Rule

Aesthetician and aesthetics instructors, electrologist and electrology instructors, manicurist and manicuring instructors, barbering and cosmetology practitioners, barbering and cosmetology managers, and barbering and cosmetology instructors.

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

200 hours

Health and Family Services *Community Services, Chs. HFS 30—*

Subject

Revises Chapter HFS 92, relating to confidentiality of treatment records, and Chapter HFS 94, relating to patient rights and resolution of patient grievances.

Policy Analysis

Chapter HFS 92 implements s. 51.30, Stats., and provides to treatment providers and consumers of mental illness, alcohol or other drug abuse, or developmental disability services, guidance on the confidentiality and release of treatment records. The department created ch. HFS 92 in 1984, and has not revised the rule since its creation.

Since ch. HFS 92 was created, laws and practice relating to the storage and handling of health care records, including mental health treatment records have undergone numerous changes. These changes include the following:

- The eHealth Care Quality and Patient Safety Board was created by Governor Doyle to help develop an ehealth information infrastructure that would support the statewide adoption and exchange of electronic health records.
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted by Congress.
- The health care industry, nationwide, expanded the use of technology to maintain, share and access health care information among peers and with consumers for treatment purposes.
- The Wisconsin legislature revised ss. 51.30 relating to the confidentiality of treatment records and 146.81 to 146.84, Stats., relating to the confidentiality of patient health care records, with the most recent changes taking place under 2007 Wisconsin Act 108. Act 108 removes several barriers to electronic health information exchange under chs. 51 and 146, Stats., particularly relating to informed consent for release and disclosure and re-disclosure of health care information.

The department intends to revise ch. HFS 92 to align the rules with the changes that have occurred in regulatory, technological and business environments since the department created the rules in 1984. These changes may include the expansion of chs. HFS 92 and 94 to include rules for patient health care records as that phrase is defined under s. 146.81 (4), Stats. The department also intends to revise ch. HFS 94 to ensure that its provisions, including those concerning notification to clients of rights; informed consent, confidentiality of records, provider system requirements; and rights to files grievances, are in agreement with the changes made to ch. HFS 92.

Statutory Authority

Sections 51.30 (12), 51.61 (5) (b) and (9), and 227.11 (2) Stats.

Entities Affected by the Rule

Providers and consumers of mental illness, alcohol or other drug abuse, or developmental disability services; and other health care providers, patient advocates, and privacy advocates.

Comparison with Federal Regulations

Federal standards for the privacy and security of health information are codified under 45 CFR Parts 160, 162, and 164. These regulations implement the Health Insurance Portability and Accountability Act of 1996 (HIPAA). 45 CFR Part 164, subpart C includes security standards for protection of electronic protected health information. 42 CFR Part 2 are federal regulations relating to the confidentiality of alcohol and substance abuse patient records.

Estimate of Time Needed to Develop the Rule

The department estimates that it will take a cross-functional team approximately 1000 hours to develop the proposed rules through discussion, research, and feedback from stakeholders.

Contact Person

Katie Plona
Office of the Secretary
(608) 266-3262

Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises Chapter NR 27, relating to the removal of trumpeter swans from the list of Endangered Species and the removal of osprey from the list of Threatened Species.

Policy Analysis

The Department proposes to delist the trumpeter swan and osprey from the state's list of endangered and threatened species. Numerous private, corporate, and agency partners have cooperated in the swan recovery program. Additionally, various power and transmission line companies have contributed to osprey recovery in Wisconsin. They will be very interested to see that their efforts have resulted in the full recovery of this species in the state.

Statutory Authority

Sections 227.11 and 29.604, Stats.

Entities Affected by the Rule

The trumpeter swan restoration program in Wisconsin was a collaboration of effort and support from 80 different partners. The Natural Resources Foundation collected funding for the project from 555 donors. All of these organizations and individuals will be pleased to see trumpeter swans removed from the Endangered Species List.

Several different power companies and transmission line companies have helped to recover osprey in Wisconsin. They too will be pleased with the results of their efforts.

Comparison with Federal Regulations

Not applicable.

Estimate of Time Needed to Develop the Rule

The Department will need approximately 32 hours of staff time to develop the rule amendment.

Contact Information

Randle Jurewicz, Bureau of Endangered Resources (ER/6)
GEF 2, Madison WI 53707, (608) 267-7507 or email:
Randle.Jurewicz@wi.gov

Natural Resources

Air Pollution Control, Chs. NR 400—

Subject

Revises Chapters NR 419 and 421 to 423, relating to volatile organic compounds RACT rules.

Objective of the Rule

Section 182(b)(2) of Clean Air Act requires implementation of reasonably available control technology (RACT) for sources of volatile organic compounds (VOC) in moderate and worse ozone nonattainment areas, for which EPA has published a Control Technology Guideline (CTG). DNR's rules set VOC RACT emission limits in Wisconsin's moderate ozone nonattainment areas. However, on March 17, 2008, EPA notified DNR that Wisconsin's state implementation plan was deficient because DNR's rules did not set VOC RACT emission limits consistent with recently published CTGs in Wisconsin's ozone nonattainment areas. The rule revisions are necessary to avoid potential federal sanctions, including withholding of federal highway funds, and implementation of a federal plan instead of State rules.

Policy Analysis

EPA has identified certain source categories for which EPA has published a CTG and Wisconsin does not have VOC RACT rules. These categories include:

1. Synthetic Organic Compound Manufacturing – Reactor/Distillation Operations
2. Synthetic Organic Compound Manufacturing – Air Oxidation Processes
3. Industrial Wastewater

EPA has also identified several VOC RACT emission limits in Wisconsin's rules that need to be updated to reflect new CTGs from EPA. These categories include:

1. RACT Industrial Solvent Cleaning.
2. Lithographic and Letter Press Printing
3. Flexible Package Printing
4. Flat Wood Panel Coating
5. Paper, Film and Foil Coating
6. Large Appliance Coating
7. Metal Furniture Coating

Since EPA has developed guideline documents for the source categories on the two lists, the Bureau of Air Management does not expect to deal with major policy decisions related to rule drafting. However, some minor changes to EPA's guidelines may be necessary to improve implementation in Wisconsin.

Statutory Authority

Section 285.11 (6), Wis. Stats., requires DNR to develop a plan for the prevention, abatement and control of air pollution. With limited exceptions, the rules or control strategies for ozone control must conform to the federal Clean Air Act.

Entities Affected by the Rule

Affected parties include industrial sources in the various identified categories. There are several other organizations that may not be directly affected by the rule, but are likely to have an interest in rule development including Wisconsin Manufacturers and Commerce, environmental organizations such as Clean Wisconsin and Sierra Club, and public health organizations.

Comparison with Federal Regulations

To guide the states' VOC RACT rule development, EPA has developed CTG documents that the states must follow in establishing applicability criteria and emission limits for RACT rules. DNR's rule development will be based on and consistent with EPA guidance documents, but some minor changes from EPA's guidelines may be necessary to improve implementation in Wisconsin.

Estimate of Time Needed to Develop the Rule

Since the proposed rules involve a number of source categories, the Bureau of Air Management expects to use multiple rule drafters for the various VOC RACT categories. A total of about 2600 hours is need for drafting and internal review.

Contact Information

Larry Bruss
608-267-7543
Larry.bruss@wisconsin.gov

Natural Resources

Air Pollution Control, Chs. NR 400—

Subject

Revises Chapter NR 428, relating to the control of nitrogen compound emissions applicable to stationary sources.

Objective of the Rule

In April and May 2007 the NRB adopted rules to establish Reasonably Available Control Technology (RACT) emission limits for large sources of nitrogen oxide in southeastern Wisconsin in order to meet Clean Air Act requirements applicable to 8-hour ozone non-attainment areas.

When the Department submitted the NO_x RACT rules for federal approval the USEPA identified several potential concerns and deficiencies. As a result, we are proposing minor amendment to revise the NO_x RACT rules to allow for federal approval of the rules as part of Wisconsin's State Implementation Plan (SIP).

The Department will also be proposing other clean-up amendments to revise the NO_x RACT and associated NR 428 NO_x rules to:

- Incorporate miscellaneous corrections
- Simplify rule requirements
- Address consistency and duplication of requirements between the adopted RACT program and previously existing requirements of ch. NR 428.

These proposed revisions will not change the emission limits or the sources which are subject to NO_x RACT emission limits.

Policy Analysis

Wisconsin's NO_x RACT program, comprised of rules under ch. NR 428 subch. IV, was adopted and became effective in July 2007. These rules are intended to fulfill certain requirements of section 182(f) of the Clean Air Act requirements for addressing the 8-hour ozone standard and must be federally approved as part of Wisconsin's State Implementation Plan (SIP). The ch. NR 428 NO_x RACT rules implement a control program for major sources of NO_x emissions in Wisconsin's moderate 8-hour ozone non-attainment counties of Kenosha, Racine, Milwaukee, Waukesha, Washington, Ozaukee, and Sheboygan.

The Department submitted the NO_x RACT rules to US EPA for approval into the State Implementation Plan. The term "potential to emit" (PTE) used in the applicability statement under s. NR 428.20 for determining which sources are subject to NO_x RACT requirements. As a result of their review, the US EPA has requested that the term be defined specifically for this purpose in the rule. According to EPA, a source's PTE for NO_x RACT purposes must be calculated as the theoretical maximum emissions of all emissions units at a facility. This EPA definitional basis was used in developing the emission limit requirements and is therefore consistent with the adopted NO_x RACT program rules. In addition, the required EPA definition of PTE is consistent with the state's current definition under s. NR 400.02(95) which is used for determining sources subject to VOC RACT emission limits.

The US EPA also identified additional revisions to the RACT rules for consistency with SIP approval criteria. These include the description of exemptions and the emissions averaging provisions.

In addition to revisions necessary for EPA SIP approval, the Department has identified several clarifications and simplifications that would be helpful in ch. NR 428. The proposed revisions pertain to monitoring and reporting requirements, administrative procedures, submittal dates, emissions averaging, and inconsistent or duplicative requirements between the recently adopted NO_x RACT rules and previously existing rules in ch. NR 428. These potential revisions will not change emission limits or the emission units which are subject to NO_x RACT emission limitations.

Statutory Authority

Statutory authority is provided in s. 285.11 (6) and 285.14, Wis. Stats., in order to implement requirements of sections 172(c)(1) and (6) and 182(a)(2)(A) and (b)(2) and (f) of the Clean Air Act [42 USC 7502(c)(1) and (6) and 7511a(a)(2)(A) and (b)(2) and (f)].

Entities Affected by the Rule

The proposed revisions are not intended to change the specific emission units subject to an emission requirement under the current rules. These rules apply to stationary sources, including electric utility generators and industrial combustion sources, in the ozone non-attainment counties of southeastern Wisconsin.

Comparison with Federal Regulations

The Clean Air Act requires RACT emission limitations to apply to emission units at a facility considered a major source. A source is a major source if the total of all potential emissions of the same pollutant (VOC or NO_x) from the source exceeds a specific threshold. Potential emissions are based on the theoretical potential to emit over 8760 hours per year before add-on controls¹. A physical limitation on operation or

affecting hours of operation may be considered in calculating theoretical emissions.

Estimate of Time Needed to Develop the Rule

The department estimates approximately 360 hours will be required to develop and adopt the proposed revisions.

Contact Information

Tom Karman
WDNR, Bureau of Air Management
P.O. Box 7921
Madison, Wis 53707-7921
(608) 264-8856
Thomas.Karman@wisconsin.gov

Regulation and Licensing

Subject

Revises Chapters RL 180 to 183 relating to applications, renewal, temporary permits, standards of practice and discipline of licensed midwives.

Objective of the Rule

2007 Wisconsin Act 104 will amend several sections of Subchapter XII of Chapter 440, Stats., relating to the practice of midwifery. The amendments to the statute will require the Department of Regulation and Licensing to amend administrative rules of application for licensure, application for a temporary permit, renewal of licensure, standards of practice and grounds for discipline. 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 automatic 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.

Policy Analysis

The licensed midwives statutes and rules do not currently include a requirement for proficiency in the use of an AED. 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 midwives to complete approved training in the use of AED's as a requirement for receiving a license. Michigan, Illinois and Iowa do not regulate midwives. Minnesota does not require licensed midwives 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 Licensed Midwives to complete an approved training program in the usage of AED's prior to renewal in the current biennium. The current biennium ends on June 30, 2008.

Statutory Authority

Section 227.11 (2), Stats., and Subch. XII of Ch. 440, Stats.

Entities Affected by the Rule

Midwives license applicants, applicants for a temporary permit, and active midwife 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: 200.

Transportation

Subject

Creates Chapter Trans 145, clarifying that neighborhood electric vehicle (NEV) registration is valid only on approved roads.

Objective of the Rule

2005 Wis. Act 329 and 2007 Wis. Act 33 created s. 349.26, Stats., which allows a city, town, or village by ordinance to authorize operation of Neighborhood Electric Vehicles (NEVs) on its roadways that have speed limits of 35 mph or less. The law specifies that the ordinance may apply to State Trunk Highways (STH) in only two circumstances: (1) crossing an STH at a location approved by DOT; or (2) traveling longitudinally upon a connecting highway segment approved by DOT.

While s. 349.26, Stats., language implies that NEVs cannot operate on local roads not specified in the ordinance or at any unapproved location on State Trunk Highways, statutes do not have language that specifically prohibits NEV operation on those roads. 2007 Wis. Act 33 requires DOT to register NEVs under Chapter 341, Stats. Because NEVs bear DMV-issued registration plates, NEVs traveling on unapproved roads may appear to violate no laws, despite the Legislature's intent to restrict NEV use to approved roads. DMV believes that a rule clarifying that NEV registration is valid only on approved roads will give law enforcement a provision to cite NEV operators who travel on unapproved roads.

Policy Analysis

Registration of vehicles under Chapter 341 has historically been available for federally approved vehicles and authorizes their operation on all roadways of the state – State Trunk Highways as well as local streets. The NEV law, however, restricts NEV operation to approved roads.

Under 2005 Wis. Act 329, the policy alternative was that individual municipalities registered vehicles for operation in that municipality only. However, the Legislature found that policy alternative to be unsuitable for NEV operation in multiple communities. The Legislature, in 2007 Wis. Act 33, requires registration under Chapter 341.

In order that a license plate issued by the state not be misconstrued as allowing unrestricted NEV operation, the Department proposes this rule making. It is appropriate to limit the scope of registration as a means of enforcing the operating restrictions.

Statutory Authority

Sections 341.25 (1) (b) and 349.26, Stats.

Entities Affected by the Rule

State and local law enforcement, local governmental units, and NEV owners, operators, and sellers will benefit from clarity of administrative rule language that helps limit NEV use to approved roads.

Comparison with Federal Regulations

No federal regulations address registration and operation of NEVs.

Estimate of Time Needed to Develop the Rule

100 hours

Workforce Development

Family Supports, Chs. DWD 12–59

Subject

Revises Chapter DWD 40, relating to the establishment of birth cost orders based on child support guidelines.

Policy Analysis

Under s. 767.89 (3) (e), Stats., the content of a paternity judgment shall include an order establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established may not exceed one-half of the total actual and reasonable pregnancy and birth expenses. The order shall specify the court's findings as to whether the father's income is at or below the federal poverty line and specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses. If the father has no present ability to pay, the court may modify the judgment or order at a later date to require the periodic payments if the father has the ability to pay at that time.

If the birth costs were paid by the Medicaid program, the order for payment of birth costs under s. 767.89 (3) (e), Stats., will be to the State of Wisconsin. An unmarried mother who applies for or receives Medicaid is required to cooperate with the local child support agency in establishing paternity (if necessary), obtaining medical support, and assigning the rights to payment of medical support to the state. There are exceptions to the child support cooperation requirement for good cause and for women during pregnancy and 60 days post-partum.

The federal Office of Child Support Enforcement (OCSE) has advised states that *all medical support orders*, including coverage of the children's health care expenses and birth cost judgment amounts and periodic payments on birth costs must be set under the state's child support guidelines. The proposed rules will create a new medical support section in Chapter DWD 40 that will refer to s. 767.513, Stats., which requires the court to order responsibility and payment for a child's health care expenses in addition to ordering child support. The new section will also refer to s. 767.89 (3) (e), Stats., and establish new limits for determining birth cost judgment amount based on the payer's ability to pay.

Federal and state income tax refund offset is one of the primary tools for collection of birth cost orders owed to the state. OCSE recently notified Wisconsin that they will not certify the state's request for federal income tax refund offset for birth cost orders that have been determined using the methodology in s. 767.89 (3) (e), Stats. This provision requires the court to make a finding based on the father's ability to pay before *setting a periodic payment* on birth costs. OSCE's interpretation of federal regulations as issued in Policy Interpretation Question PIQ–07–01 provides that the *judgment amount* must be set according to guidelines that take into consideration the obligated parent's ability to pay.

The parent's income available for medical support will be determined according to the existing s. DWD 40.03, which allows courts to impute income based on earning capacity or from assets. The rule will provide that the birth cost judgment amount may be the lesser of the following:

- An amount that does not exceed one-half of the actual and reasonable cost of the pregnancy and child's birth as provided under s. 767.89 (3) (e), Stats.

- An amount that does not exceed 5% of the payer's income over a 3-year period.
- For payers with an income at or above 125% of the federal poverty level, this amount will be 5% of the payer's income over a 3-year period.
- For payers with an income that is between 75% of the federal poverty level and 125% of the federal poverty level, the rule will provide a graduated scale of amounts that are from 3.28% to 5% of the payer's income over a 3-year period.
- For payers with an income below 75% of the federal poverty level, the court may order an amount appropriate for the payer's total economic circumstances.

Although the primary impetus for this rule is to comply with federal child support regulations to ensure that OCSE will certify birth cost orders owed to the State of Wisconsin in cases under Section IV–D of the Social Security Act, the rule will also apply to other parties, such as a private insurance company seeking recovery of birth costs under s. 767.89 (3) (e), Stats.

The proposed rule will also amend the section on imputing income based on the minimum wage when information on the parent's income is unavailable. The current rules require that income be imputed based on the federal minimum wage. The proposed rules will require that income be imputed based on the higher of the federal or state minimum wage.

Statutory Authority

Sections 49.22 (9) and 227.11 (2), Stats.

Entities Affected by the Rule

County child support agencies, insurance companies, and fathers as determined by paternity judgment or court order under s. 767.89, Stats.

Comparison with Federal Regulations

In PIQ–07–01, OCSE states that medical support is a subset of child support, and child support orders must be set under state guidelines that comply with 45 CFR 302.56. State guidelines must:

- Take into consideration all earnings and income of the noncustodial parent.
- Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.
- Provide for the child's health care needs through health insurance coverage or other means.
- Provide a rebuttable presumption that the amount determined using the guidelines is the correct child support to be awarded.

The circumstances in which past-due support qualifies for federal income tax refund offset are listed in 45 CFR 303.72(a). The list includes cases where the child support agency is providing services to a Medicaid recipient.

Estimate of Time Needed to Develop the Rule

200 hours

Workforce Development

Labor Standards, Chs. DWD 270–279

Subject

Revises Chapter DWD 272, relating to minimum wages.

Policy Analysis

Under the Fair Labor Standards Act (FLSA), the federal minimum wage will be \$7.25 per hour effective July 24, 2009. The Department proposes to increase the state minimum wage to \$7.25 per hour effective July 24, 2009, to match the federal rate. The minimum wage rate and various special rates would be increased as follows:

Category	Current Rate	Proposed Rate 7/24/09	Federal Rate 7/24/09
Non-Agricultural work			
Adult	\$6.50	\$7.25	\$7.25
Minor	\$5.90	\$7.25	\$7.25*
Opportunity	\$5.90	no change	\$4.25
Agricultural work			
Adult	\$5.15	\$7.25	\$7.25*
Minor	\$4.25	\$7.25	\$7.25*
Tipped Employees			
All, except opportunity	\$2.33	no change	\$2.13
Opportunity	\$2.13	no change	\$2.13*
Caddies			
9 Holes	\$5.90	no change	not covered
18 Holes	\$10.50	no change	not covered
Camp Counselors			
	<u>Salary per week</u>	<u>Salary per week</u>	
Adults, no board or lodging	\$315	\$350	exempt
Adults, with board only	\$240	\$265	exempt
Adults, with board and lodging	\$189	\$210	exempt

Category	Current Rate	Proposed Rate 7/24/09	Federal Rate 7/24/09
Minors, no board or lodging	\$275	\$350	exempt
Minors, with board only	\$209	\$265	exempt
Minors, with board and lodging	\$165	\$210	exempt

*The federal minimum wage law does not have special rates for minors, agricultural workers, or tipped opportunity employees.

Statutory Authority

Sections 104.04 and 227.11, Stats.

Entities Affected by the Rule

The rule will affect employees not covered by or exempt from the federal minimum wage law. The federal minimum wage law applies to employees of businesses that have annual gross sales or business done of at least \$500,000. It also applies to employees of smaller businesses if the employees are engaged in interstate commerce or in the production of goods for commerce, such as employees who work in transportation or communications or who regularly use the mails or telephones for interstate communications.

In addition, the FLSA covers employees who perform duties that are closely related and directly essential to interstate activities, including guards, janitors, and maintenance workers. It also applies to employees of government agencies, hospitals, and schools, and it generally applies to domestic workers.

The proposed rule will increase the minimum weekly salary for camp counselors. These workers are exempt from federal minimum wage law.

Comparison with Federal Regulations

The current federal minimum wage rate is \$5.85 per hour. It will increase to \$6.55 per hour on July 24, 2008, and to \$7.25 per hour on July 24, 2009.

Estimate of Time Needed to Develop the Rule

100 hours

Submittal of Rules to Legislative Council Clearinghouse

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

Commerce

Amusement Rides, Ch. Comm 34

CR 08-054

On May 29, 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 34, relating to amusement rides.

Agency Procedure for Promulgation

The Safety and Buildings Division is responsible for promulgation of the rules. A public hearing is required and is scheduled for June 30, 2008.

Contact Information

Jim Quast, Program Manager
(608) 266-9292
jim.quast@wisconsin.gov

Commerce

Wis. Commercial Building Code, Chs. Comm 60-66 Plumbing, Chs. Comm 81-87

CR 08-055

On May 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 62 and 81 to 84, relating to the design, installation or construction, inspection and maintenance of plumbing.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for July 8, 2008.

Contact Information

Lynita Docken, Program Manager
(608) 785-9349
lynita.docken@wisconsin.gov

Commerce

Public Swimming Pools and Water Attractions, Ch. Comm 90

CR 08-056

On May 29, 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 90, relating to the design and construction of public swimming pools and water attractions.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for July 8, 2008.

Contact Information

Lynita Docken, Program Manager
(608) 785-9349
lynita.docken@wisconsin.gov

Insurance

CR 08-053

On May 29, 2008, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter Ins 50, relating to audit, control and financial reporting requirements.

Agency Procedure for Promulgation

A public hearing will be held on July 8, 2008.

Contact Information

A copy of the proposed rule may be obtained from the website at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact James W. Harris at (608) 267-2833 or e-mail at james.harris@wisconsin.gov in the OCI Legal Unit.

Occupational Therapists Affiliated Credentialing Board

CR 08-050

On May 22, 2008, the Occupational Therapists Affiliated Credentialing Board submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section OT 4.04 (4), relating to occupational therapist supervision of occupational therapy assistants.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 15, 2008 at 9:30 a.m. in Room 121A at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

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

Pharmacy Examining Board
CR 08-051

On May 22, 2008, the Pharmacy Examining Board submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter Phar 13, relating to the regulation of wholesale prescription drug distributors.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 23, 2008 at 9:45 a.m. in Room 121A at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

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

**Physical Therapists Affiliated
Credentialing Board**
CR 08-049

On May 22, 2008, the Physical Therapists Affiliated Credentialing Board submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters PT 2, 3, and 9, relating to examination waivers, temporary licenses and continuing education.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 10, 2008 at 9:15 a.m. in Room 121A at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

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

Public Instruction
CR 08-052

On May 27, 2008, the Department of Public Instruction submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter PI 30, relating to state special education aid for certain pupil services personnel.

Agency Procedure for Promulgation

The Division of Learning Support: Equity and Advocacy is primarily responsible for promulgation of the rule. A public hearing is required and is scheduled for July 14, 2008.

Contact Information

David Carlson, Director
School Financial Services
(608) 266-6968

Transportation
CR 08-048

On May 20, 2008, the Department of Transportation submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section Trans 250.04, relating to internet and telephone call-in fees.

Agency Procedure for Promulgation

The Division of Motor Vehicles, Bureau of Vehicle Services is responsible for promulgation of the rule. A public hearing is required and is scheduled for July 9, 2008.

Contact Information

Julie A. Johnson, Paralegal
(608) 267-3703
julie.johnson@dot.state.wi.us

Rule-Making Notices

Notice of Hearing

Commerce

Amusement Rides, Ch. Comm 34

CR 08-054

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1) and 101.17, Stats., the Department of Commerce will hold a public hearing on proposed rules under Chapter Comm 34 relating to amusement rides.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u> June 30, 2008 Monday 1:00 p.m.	<u>Location:</u> Conference Room 3B Thompson Commerce Building 201 W. Washington Avenue Madison
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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 July 9, 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 Jim Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

Copies of Proposed Rules

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

Agency Contact Person

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

Small Business Regulatory Coordinator

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be

contacted at telephone (608) 267-0297, or Email at carol.dunn@wisconsin.gov.

Analysis Prepared by Department of Commerce

Statutes interpreted

Section 101.17, Stats.

Statutory authority

Sections 101.02 (1) and 101.17, Stats.

Explanation of agency authority

Under the authority of s. 101.17, Stats., the Department of Commerce has oversight of various mechanical devices and equipment, which includes amusement rides, in order to protect public safety. The Department fulfills this responsibility by promulgating the Amusement Ride Code, under chapter Comm 34.

Related statute or rule

Sections 101.19 and 101.12 (1), Stats.

Summary of proposed rules

Chapter Comm 34 establishes minimum standards for the design, construction, operation, maintenance and assembly of amusement rides. The amusement ride code has not been subject to an overall review and update since 2003. The proposed revisions primarily clarify existing rules. In some instances the proposed changes keep the rules consistent with each other and with other Commerce codes. The few significant changes include:

- A department inspection prior to a permanent ride opening to the public for a ride which required plan review and approval. The owner of the ride is to notify the department at least 5 days prior to ride opening to the public to facilitate the department's inspection. [Comm 34.08 (1) and (2)]
- The preparation of operating fact sheets by ride owners for operators and attendants and training for operators and attendants. [Comm 34.18 (1) (b) and Comm 34.31 (6)]
- Passengers are to abide by posted height limitations for amusement ride carrying devices. [Comm 34.22 (6) (b)]
- The elimination of the allowance for one operator to simultaneously operate two amusement rides.

Comparison with federal regulations

The US Consumer Product Safety Commission under the Consumer Product Safety Act has jurisdiction over portable amusement rides. The commission has not developed any specific standard for portable amusement rides. At times the commission has issued various safety bulletins regarding operation, repair, maintenance or set-up for specific rides.

There are no existing or proposed federal regulations that regulate design, construction, maintenance or operation of amusement rides.

Comparison with rules in adjacent states

Illinois, Iowa and Michigan regulate amusement rides on a state-wide basis. Similar to Wisconsin, the administrative codes of these states regulate the design, construction, assembly, maintenance, operation, permitting and inspection of amusement rides. The state codes are:

- Illinois; Administrative Code Title 56, Chapter XII, Part 6000

- Iowa; Chapter 61 Administration of Iowa Chapter 88A, Chapter 62 Safety Rules for Amusement Rides, Amusement Devices, and Concession Booths, Chapter 88A Safety Inspection of Amusement Rides
- Michigan; Carnival and Amusement Safety General Rules, R408.801 – 408.898

Minnesota's regulation of amusement rides focuses on liability insurance and inspections to be conducted by the insurance company or an independent inspection service provider.

Summary of factual data and analytical methodologies

In developing the proposed rules the department reviewed the current requirements of the chapter Comm 34. The department also reviewed the latest editions of various ASTM standards relating to the design and manufacture, testing, operation, maintenance, inspection, quality assurance, and terminology of amusement rides and devices. The ASTM standards reviewed were:

- F 698–94 Standard Specification for Physical Information to be Provided for Amusement Rides and Devices
- F 747–06 Standard Terminology Relating to Amusement Rides and Devices
- F 770–06a Standard Practice for Ownership and Operation of Amusement Rides and Devices
- F 846–92 Standard Guide for Testing Performance of Amusement Rides and Devices
- F 853–05 Standard Practice for Maintenance Procedures for Amusement Rides and Devices
- F 893–05a Standard Guide for Inspection of Amusement Rides and Devices
- F 1193–06 Standard Practice for Quality Manufacture, and Construction of Amusement Rides and Devices
- F 1305–94 Standard Guide for Classification of Amusement Ride and Device Related Injuries and Illnesses
- F 1957–99 Standard Test Method for Composite Foam Hardness–Durometer Hardness
- F 2007–07 Standard Practice for the Classification, Design, Manufacture and Operation of Concession Go-Karts and Facilities
- F 2137–04 Standard Practice for Measuring the Dynamic Characteristics of Amusement Rides and Devices
- F 2291–06a Standard Practice for Design of Amusement Rides and Devices
- F 2374–07a Standard Practice for Design, Manufacture, Operation, and Maintenance of Inflatable Amusement Devices
- F2460 –06 Standard Practice for Special Requirements for Bumper Boats

The review of the code and the ASTM standards included input from the Amusement Ride Code Council. A responsibility of council members is to bring forth concerns their respective organizations may have with the proposed rules, including concerns regarding economic impacts. (Copies of the council meetings summaries are on file in Safety and Building Division.)

Analysis and supporting documents used to determine effect on small business

The Amusement ride council's composition reflects a variety of organizations whose memberships include small businesses. The department utilizes advisory councils to

gather information on potential impacts, including economic, in complying with both the technical and administrative requirements of its code.

In that most of the proposed revisions are for clarification, the department does not consider the rules to have an economic impact on small businesses. In addition the code council did not identify or convey any impacts to the department.

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

Environmental Analysis

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

Initial Regulatory Flexibility Analysis

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

The rules will affect amusement ride owners and operators.

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

Proposed revisions will require amusement ride owners to prepare operating fact sheets for ride operators and attendants. Owners are also to provide and document training for ride operators and attendants.

Types of professional skills necessary for compliance with the rules.

There are no new types of professional skills necessary for compliance with the rules.

Will rules have a significant economic impact on small businesses?

No.

Fiscal Estimate

Summary

The proposed revisions for ch. Comm 34 primarily clarify existing requirements. The rules will not impact the current department workload or resources. In that the proposed revisions are for clarification, the department does not believe rules create an economic impact for compliance by amusement ride owners or operators.

State fiscal effect

None.

Local fiscal effect

None.

Long-range fiscal implications

None are anticipated.

Notice of Hearing Commerce

***Wis. Commercial Building Code, Chs. Comm 60–66
Plumbing, Chs. Comm 81–87
CR 08–055***

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 and 145.02, Stats., the Department of Commerce will hold a

public hearing on proposed rules under Chapters Comm 62 and 81 to 84, relating to the design, installation or construction, inspection and maintenance of plumbing.

Hearing Information

The public hearing will be held as follows:

Date and Time:	Location:
July 8, 2008	Thompson Commerce Building
Tuesday	Human Resources Conference
10:00 a.m.	Room (First Floor)
	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 July 18, 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 Lynita Docken, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at lynita.docken@wisconsin.gov.

Copies of Proposed Rules

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

Agent Contact Person

Lynita Docken, Program Manager, lynita.docken@wisconsin.gov, (608) 785-9349.

Small Business Regulatory Coordinator

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

Analysis Prepared by Department of Commerce

Statutes interpreted

Sections 101.02 and 145.02, Stats.

Statutory authority

Sections 101.02 and 145.02, Stats.

Explanation of agency authority

Sections 101.02 and 145.02 Stats., grant the Department of Commerce general authority for protecting the health, safety and welfare of the public by establishing reasonable and

effective safety standards for the design, installation or construction, inspection and maintenance of plumbing. In accordance with s.145.13, Stats., the Department is also responsible for safeguarding the waters of the state.

Related statute or rule

Section 145.13, Stats.

Chapters Comm 60 to 66, Commercial Building Code.

Chapters 20 to 25, Uniform Dwelling Code.

Chapters 81 to 87, Uniform Plumbing Code.

Summary of proposed rules

The proposed revisions to Chapters Comm 81 to 84 clarify existing rules and bring the state Uniform Plumbing Code up to date with current technology and nationally recognized standards. The proposed rules contain a number of modifications to the technical requirements within these standards, reorganization of current requirements and editorial changes.

The proposed change in Chapter Comm 62 would limit the use of waterless antiseptic cleansing provisions to facilities where waterless toilets or urinals are used.

The following is a summary of the major proposed changes to Chapters Comm 81 to 84:

- a. Allow the recycling of wastewater discharged from water closets and urinals. [Comm 82.34 (3) (a) 1.]
- b. Create code language to recognize alternate standards that have been used by the department. (e.g. Pressurized sewer systems and water treatment device sizing). [Comm 82.30 (11) (f) 2. and Comm 82.40, Table 82.40-3e]
- c. Expand the requirement for demand regeneration controls for water treatment devices to devices that discharge to municipal sewers. [Comm 82.40 (8) (j)]
- d. Use the term "manufactured home" in place of the term "mobile home" in numerous places as referenced in s.101.91 (2), Stats. [Comm 81.01 (152), (153), and (154) and Comm 82.51]
- e. Change the calculation of the load factor on drain piping so it reflects national model plumbing code requirements. [Comm 82.30 (3)]
- f. Modify the triggers for the installation of stack vents serving drain stacks from two to five or more branch intervals. [Comm 82.31 (4)(a) and 82.31 (5)]
- g. Expand and describe more fully the grease and oil treatment requirements for restaurants. [Comm 82.34 (5)]
- h. Modify the requirements for secondary roof drains so they more closely follow national standards. [Comm 82.36 (11)]
- i. Upgrade the requirements for water conserving fixtures to more closely correspond to national standards. [Comm 84.20 (3)(b)2.]

Comparison with federal regulations

There are several existing federal regulations that relate to the design, installation or construction, inspection and maintenance and repair of plumbing. Some of these regulations require compliance with the 2006 editions of the International Plumbing Code (IPC), a national model code developed by the International Code Council (ICC), and the Uniform Plumbing Code (UPC), a national model code developed by the International Association of Plumbing and Mechanical Officials.

An Internet-based search of the *United States Code* (USC) found the following existing federal rules that impact plumbing. The Wisconsin Uniform Plumbing Code reflects the requirements currently contained in these federal laws.

- Assembly Bill No. 1953, Chapter 853 – The Lead Solder, Pipe and Flux Law expands Section 116875 of the Health and Safety Code as contained in USC Title 42, Chapter 6A, Subchapter XII, Part B, Section 300g–6 relating to lead plumbing to include any pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption. The law, which becomes effective January 1, 2010, passed both the Assembly and the Senate in 2006 and also revises the term “lead free.”
- USC Title 42, Chapter 6A, Subchapter XII, Part F, Section 300j–24 – Lead contamination in school drinking water outlines the testing protocol for lead contamination in drinking water from coolers and other sources at educational agencies, private nonprofit elementary or secondary schools and day care centers. The law became effective in 1999. Currently, legislation is being proposed that would amend this section of the Safe Drinking Water Act.
- USC Title 33, Chapter 26, Subchapter IV, Section 1342 – National Pollutant Discharge Elimination System (NPDES) established Phase I of the storm water program in 1990. Nine years later, Phase II of the program was signed into law and requires smaller communities to develop and implement a comprehensive storm water management program.

An Internet-based search of the 2005 through 2008 issues of the *Federal Register* found a proposed rule about plumbing connections to manufactured homes published April 26, 2005 in Vol. 70, No. 79. Comments and an analysis have been received and the final rule will become effective October 20, 2008. Several of the proposed requirements exceed the standards of the Wisconsin Uniform Plumbing Code. These include the requirement for a shutoff valve to be located beneath or adjacent to the home, a condition that the water heater be removed for air testing water systems and a requirement for the installation of a drain cleanout when pipe pitch is 1/8" per foot.

Comparison with rules in adjacent states

An Internet-based search of the four adjacent states found the following:

- The Illinois Department of Public Health administers a state-written uniform plumbing code with exceptions for cities that existed prior to Illinois statehood.
- The Iowa Department of Public Health administers the Iowa Uniform Plumbing Code that adopts the 2000 edition of the national UPC with amendments.
- The Michigan Department of Consumer and Industry Services, Bureau of Construction Codes developed the 2003 Michigan Plumbing Code that became effective December 31, 2003. Based on the IPC, the code includes state amendments.
- The Minnesota Department of Labor and Industry, Building Codes and Standards Division, administers the Minnesota Plumbing Code, a state written uniform code that was revised August 25, 2003.

Summary of factual data and analytical methodologies

The primary methodology for updating the Wisconsin Uniform Plumbing Code, chapters Comm 81 to 84 has been a review and assessment of the latest editions of the national technical standards that serve as the basis for Wisconsin code. Staff prepared a comprehensive comparison of the changes in the 2006 editions of the IPC and the national UPC to what currently is adopted in chapters Comm 81 to 84. The department's review and assessment process involved the

participation of the Plumbing Advisory Code Council. The members of that Council represent the many stakeholders involved in the plumbing industry including designers, inspectors, labor and building contractors. (A listing of the Plumbing Advisory Code Council is provided at the end of this analysis.)

The department believes the national model codes reflect current societal values with respect to safeguarding people and property from hazards arising from the use of plumbing.

Analysis and supporting documents used to determine effect on small business

The department used the Plumbing Advisory Code Council to gather and analyze information on potential impacts in complying with both the technical and administrative requirements of the codes. Many small businesses belong to the industry associations that sit on the advisory council. A responsibility of council members is to bring forth concerns that their respective organizations may have with the requirements including economic impact.

In addition to posting rule development and council activities on the department's web site, the department offers an Email subscription service that is available to all small businesses. This service provides Email notification of council meetings, meeting, agendas and council meeting progress reports so small businesses can follow proposed code changes.

Environmental Analysis

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

Initial Regulatory Flexibility Analysis

Summary

The department believes the rules will not increase the effect on small businesses from what the current rules impose on them. An economic impact report is not required pursuant to s. 227.137, Stats.

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

The proposed rules will affect any business involved with the ownership, design, construction and installation, inspection, repair and maintenance of plumbing.

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

There are no additional reporting, bookkeeping or other procedures required for compliance with the rules.

Types of professional skills necessary for compliance with the rules.

There are no additional professional skills necessary for compliance with the rules.

Will rules have a significant economic impact on small businesses?

No.

Fiscal Estimate

Summary

The Safety and Buildings Division is responsible for administering and enforcing rules relating to the design, installation or construction, inspection and maintenance of plumbing. The proposed rules consist of updates of chapters Comm 81 to 84, Wisconsin Uniform Plumbing Code, and chapter Comm 62, Wisconsin Commercial Building Code,

including the incorporation by reference of the latest editions of many national standards related to plumbing products and methodologies. There are no new regulatory schemes contained in the proposed rule revisions that would significantly affect revenues, expenditures or the division's workloads.

The proposed rules will not have a fiscal effect on other state agencies or local governments.

The proposed rules will not increase the effect from what the current rules impose on small businesses that own or are involved in the design, installation or construction, inspection and maintenance of plumbing.

State fiscal effect

None.

Local fiscal effect

None.

Long-range fiscal implications

None are anticipated.

Notice of Hearing

Commerce

***Public Swimming Pools and Water Attractions,
Ch. Comm 90***

CR 08-056

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 and 145.26, Stats., the Department of Commerce will hold a public hearing on proposed rules under Chapter Comm 90 relating to the design and construction of public swimming pools and water attractions.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
July 8, 2008	Thompson Commerce Building
Tuesday	Human Resources Conference
1:00 p.m.	Room (First Floor)
	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 July 18, 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 Lynita Docken, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at lynita.docken@wisconsin.gov.

Copies of Proposed Rules

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

Agency Contact Person

Lynita Docken, Program Manager, lynita.docken@wisconsin.gov, (608) 785-9349.

Small Business Regulatory Coordinator

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

Analysis Prepared by Department of Commerce

Statutes interpreted

Sections 101.02 and 145.26, Stats.

Statutory authority

Sections 101.02 and 145.26, Stats.

Explanation of agency authority

Under the authority of ss. 101.02 and 145.26, Stats., the Department of Commerce has the authority to promulgate rules to protect the health, safety and welfare of the public by establishing reasonable and effective safety standards for the design, construction, alteration or reconstruction of public swimming pools, water attractions and associated equipment.

Related statute or rule

Chapter HFS 172, Safety, Maintenance and Operation of Public Pools and Water Attractions.

Chapters Comm 60 to 66, Wisconsin Commercial Building Code.

Chapters Comm 81 to 87, Wisconsin Uniform Plumbing Code.

Summary of proposed rules

The primary revisions to chapter Comm 90 reflect the most current edition of the American National Standards Institute/International Aquatics Foundation (ANSI/IAF) requirements for public swimming pools and aquatic recreation facilities. The proposed rules contain a number of modifications to the technical requirements within these standards, reorganization of current requirements and editorial changes. The public swimming pool portion of chapter Comm 90 has not been significantly revised since 1994 when the public swimming pool program was transferred to the Department of Commerce from the Department of Health and Family Services. The proposed code requirements include updates that reflect current technology and options for the design and installation of public swimming pools and water attractions. The proposed revision of chapter Comm 90 also combines the public swimming pools and water attractions sections of the present code.

The following is a summary of the major rule changes to this chapter:

- a. Creates uniformity between the regulations for public swimming pools and water attractions.
- b. Provides more consistency between Wisconsin's code and the national standards (ANSI/IAF-1, 2 and 9).

- c. Provides clearer code language to eliminate the need for web interpretations on various issues (for example, vanishing edge pools).
- d. Delineates requirements for entries and exits serving public swimming pools and water attractions.
- e. Creates requirements and allowances for swimouts and underwater seats and benches.
- f. Expands the requirement for automatic chemical controllers to public swimming pools. Current code requires controllers for water attractions.
- g. Defines the enclosing building to be an acceptable barrier for indoor public swimming pools or water attractions.

Comparison with federal regulations

In December 2007, the United States Congress and President George Bush signed the Virginia Graeme Baker Pool and Spa Safety Act into law. This new federal law requires safety improvements in public pools and spas including the inspection and replacement of all drain covers with anti-entrapment devices or systems. Such devices or systems are expected to reduce injury due to the suction effects around drain outlets. The proposed revisions to Chapter Comm 90 are intended to reflect the public pool and water attractions requirements of the Pool and Spa Safety Act Section 1404.

An Internet search was conducted to review and compare any federal rules or proposed federal rules for “water attractions,” “water parks,” “water recreation facilities” and “public swimming pools.” No federal rule or proposed rule was found that addresses public swimming pools, water parks, in-pool water attractions or play devices.

An Internet search to review and compare any federal rules or proposed federal rules for “pool slides” resulted in the finding of 16CFR, Part 1207, Consumer Product Safety Commission Standards for swimming pool slides (revised January 2008). It was found that 75 percent of pool slides are installed in residential pools and not within the scope of this proposal. No federal rule or proposed rule was found that addresses the manufacture, construction or installation of waterslides as they exist in today’s water parks.

An Internet search to review and compare any federal rules or proposed federal rules for accessibility guidelines for persons with disabilities resulted in the finding of 36CFR, Part 1191, Architectural and Transportation Barriers Compliance Board’s final rule on accessibility guidelines for recreational facilities for persons with disabilities (*Federal Register*, Vol. 67, No. 170, February 3, 2002). The guidelines ensure that newly constructed and altered recreation facilities including public swimming pools and spas meet the requirements of the Americans with Disabilities Act (ADA). In addition, the Architectural and Transportation Barriers Compliance Board provided significant input to the ANSI/IAF–1 Public Pool Standard Committee and worked to ensure consistency between the ANSI/IAF–1 standard and the ADA accessibility guidelines. The proposed changes to Chapter Comm 90 references Vol. 67, No. 170, of the *Federal Register*, plus they are based on the ANSI/IAF–1 standard.

Comparison with rules in adjacent states

A comparison of the four adjacent states found that all had regulations for public swimming pools and require pool plan approval before construction. This proposal also relates to water attractions (waterslides, splash pads, activity pools, etc.) and Wisconsin’s neighboring states have various mechanisms for addressing new technology and imaginative designs.

The following information was ascertained during an Internet–based search of adjacent states:

- a. The Illinois Department of Public Health provides for the inspection and licensing of all public swimming pools, spas, waterslides, wading pools, and bathing beaches. Effective February 2003, the Department reviews all plans and specifications before construction can begin.
- b. The Iowa Department of Public Health, Division of Environmental Health oversees the design, construction and reconstruction of public swimming pools. It issues permits and certifies that the plans for swimming pools, spas, wading pools, waterslides, wave pools, and spray pads comply with rules and statutes that were revised May 2005.
- c. The Minnesota Department of Health provides plan review and construction inspection for all public pools within the state. The requirements include the design, construction, installation and alteration of a public pool including individual approval where the designer must prove a design’s compliance with the intent of the code. The Department also is responsible for issuing permits.
- d. The Water Bureau, Drinking Water and Environmental Health Section of the Michigan Department of Environmental Quality is responsible for issuing construction permits for public swimming pools (including spas, leisure pools, activity pools, water slide pools, and lazy rivers). The Department also requires a permit for the modification of any existing public swimming pool.

Summary of factual data and analytical methodologies

The primary methodology for updating the Wisconsin Administrative Code, chapter Comm 90 has been a review and assessment of the latest edition of the national technical standards for the design and construction of public swimming pools and water attractions. Staff prepared a comprehensive comparison of what is currently adopted under Comm 90 to the latest edition of the ANSI/IAF–1 Public Swimming Pools standard.

The Department’s review and assessment process involved the participation of the Pool Advisory Code Council. The members of that Council represent many stakeholders involved in the pool and water attractions industry, including designers, manufacturers, inspectors, contractors and operators of public swimming pools. (A listing of the Pool Advisory Code Council is provided at the end of this analysis.)

The Department believes that the national model codes reflect current societal values with respect to protecting public health, safety and welfare in the design, construction, use, operation and maintenance of public swimming pools, water attractions and associated equipment. The ANSI/IAF use a process open to all parties in the development of its standards. More information on the development of these standards may be obtained from the ANSI web site at: www.ansi.org.

Analysis and supporting documents used to determine effect on small business

The Department used the Pool Advisory Code Council to gather and analyze information on potential impacts in complying with both the technical and administrative requirements of the codes. Many small businesses belong to the industry associations that sit on the advisory council. A responsibility of council members is to bring forth concerns that their respective organizations may have with the requirements including economic impact.

In addition to posting rule development and council activities on the Department's web site, the Department offers an Email subscription service that is available to small businesses. This service provides Email notification of council meetings, meeting, agendas and council meeting progress reports so small businesses can follow proposed code changes.

It is anticipated this requirement will not have a significant impact on small businesses owning, designing, building, altering, or remodeling public swimming pools, water attractions and associated equipment.

Environmental Analysis

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

Initial Regulatory Flexibility Analysis

Summary

The Department believes the rules will not increase the effect on small businesses from what the current rules impose on them. An economic impact report has not been required pursuant to s. 227.137, Stats.

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

The proposed rules will affect any business that owns or is involved with the design, construction, installation, repair, alteration, and reconstruction of public swimming pools, water attractions, and associated equipment.

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

There are no additional reporting, bookkeeping or other procedures required for compliance with the rules.

Types of professional skills necessary for compliance with the rules.

There are no additional professional skills necessary for compliance with the rules.

Will rules have a significant economic impact on small businesses?

No.

Fiscal Estimate

Summary

The Safety and Buildings Division is responsible for administering and enforcing rules relating to the design, construction, alteration or reconstruction of public swimming pools, water attractions and associated equipment. The proposed rules are based upon the latest edition of the American National Standards Institute/International Aquatics Foundation (ANSI/IAF) requirements for aquatic recreation facilities (swimming pools and water attractions) and clarify existing technical requirements. The division does not anticipate that the proposed rules will increase its workload and the workload can be accommodated with current resources.

The proposed rules will not have a fiscal effect on other state agencies or local governments.

The proposed rules will not increase the effect from what the current rules impose on small businesses that own or are involved in the design, construction, alteration or reconstruction of public swimming pools and water attractions.

State fiscal effect

None.

Local fiscal effect

None.

Long-range fiscal implications

None are anticipated.

Notice of Hearing

Insurance

CR 08-053

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., the Office of the Commissioner of Insurance will hold a public hearing to consider the adoption of a rulemaking order affecting sections Ins 50.01, 50.05, 50.08, 50.10, 50.11, 50.12, 50.13, 50.14, 50.15, 50.16, 50.17, 50.18, Wis. Adm. Code, relating to audit, control and financial reporting requirements.

Hearing Information

Date: July 8, 2008

Time: 10:00 a.m.,

or as soon thereafter as the matter may be reached

Place: Office of the Commissioner of Insurance
Room 227, 125 South Webster St 2nd Floor
Madison, WI

Submission of Written Comments

Written comments can be mailed to:

James W. Harris

Legal Unit – OCI Rule Comment for Rule Ins 5000

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Written comments can be hand delivered to:

James W. Harris

Legal Unit – OCI Rule Comment for Rule Ins 5000

Office of the Commissioner of Insurance

125 South Webster St – 2nd Floor

Madison WI 53703-3474

Comments can be emailed to:

James W. Harris

james.harris@wisconsin.gov

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

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

Copies of Proposed Rule and Agency Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov.

(608) 264-8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

Small Business Regulatory Coordinator

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

Analysis Prepared by the Office of the Commissioner of Insurance

Statutes interpreted

Sections 600.01, 601.41 (3), 601.42 and 623.02, Stats.

Statutory authority

Sections 600.01 (2), 601.41 (3), 601.42 and ch. 623, Stats.

Explanation of agency authority

OCI has set standards for accounting practices related to the preparation and submission of annual audited financial reports, annual financial statements and examinations required of insurers doing business in Wisconsin.

Related statutes or rules

Sections 600.01, 601.41 (3), 601.42 and 623.02, Stats.

Plain language summary

The provisions of subch. I of ch. 50, Wis. Adm. Code establish the requirement to file an annual audited financial report (CPA audit) and the related standards including applicability, auditor qualification requirements and the auditor duty to report adverse financial conditions. The proposed rule updates and adds certain general requirements including those related to auditor independence, the scope of the audit and report, communication of internal control matters noted in the audit, an audit committee, and management's report of internal control over financial reporting. With respect to auditor independence the proposed rule provides that the lead auditor may not serve in that capacity for a period more than five years. The rule specifies various non-audit services that, if performed by the auditor, would impair the auditor's independence in relation to the insurer. Insurers with less than \$100 million in direct and assumed premium may request a waiver from the requirement based upon financial or organizational hardship. Partners and senior managers of the audit engagement may not serve as a member of the board of directors, or officer, or controller, or similar position of the insurer if employed by the independent accounting firm that audited the insurer during the one-year period which preceded the most current statutory opinion. With respect to corporate responsibility the proposed rule provides that every insurer required to file an annual audited financial report shall also be required to have an audit committee that is directly responsible for the appointment, oversight and compensation of the auditor. Insurers with less than \$ 500 million in direct and assumed premium may apply for a waiver from this requirement based on hardship. With respect to internal control by an insurer over financial reporting the proposed rule requires that management of insurers with more than \$ 500 million in direct and assumed premium file a report with the Commissioner regarding its assessment of internal control over financial reporting, including a statement whether the controls are effective to provide reasonable assurance regarding the reliability of the statutory financial statements and disclosure of any unremediated material weaknesses in internal control over financial reporting.

Comparison with federal regulations

There are no federal regulations which address annual financial reports, annual financial statements and

examinations to be prepared by insurers doing business in Wisconsin. Certain insurers, however are SEC registrants, and are subject to audit committee independence and preapproval requirements of the Securities and Exchange Act of 1934, management reports on internal control over financial reporting requirements of Section 404 of the Sarbanes-Oxley Act of 2002, and SEC regulations promulgated thereunder.

Comparison of rules in adjacent states

Illinois: Il. Adm. Code Title 50, Part 925, Section 925.70, requires annual audited financial reports from insurers doing business in the state that are prepared by a qualified independent certified public accountant. The state has indicated to the NAIC that consideration of the Model audit regulation will be considered in the fall of 2008.

Iowa: Iowa Adm. Code 191-5.25, requires annual audited financial reports from insurers doing business in the state that are prepared by a qualified independent certified public accountant. The state has indicated to the NAIC that it has initiated the process for consideration of the Model audit regulation through prehearing exposure to be followed by submission to its rules committee in late 2008.

Michigan: Mich. Comp. Laws, Ch. 500, requires annual audited financial reports from insurers authorized to do business in the state that are prepared by an independent certified public accountant. The state has indicated to the NAIC that there is legislation pending to modify its s. 10 concerning audit reports.

Minnesota: Minn. Stat. Ch. 60A.129, Subd. 3, requires annual audited financial reports from insurers doing business in the state that are prepared by an independent certified public accountant. The state has indicated to the NAIC that consideration of the Model audit regulation is contemplated in 2009.

Summary of factual data and analytical methodologies

The proposed rule is based upon a model regulation adopted by the National Association of Insurance Commissioners (NAIC) at the June, 2006, national meeting. The proposed rule is under consideration as it has been recommended by the NAIC, will increase the ability of management and regulators to monitor financial status, and will provide control documentation contemplated in the enhanced financial surveillance procedures adopted by the NAIC and required as an accreditation standard for statutory examinations conducted after January 1, 2010.

Analysis and supporting documentation used to determine effect on small businesses

The proposed rule establishes direct and assumed premium thresholds and waiver provisions that minimize the effect upon smaller insurers.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

Effect on private sector

This rule change may have a significant financial effect on a small number of companies in the private sector regulated by OCI. Costs associated with implementing the provisions of the proposed rule, other than those related to enhanced documentation of internal controls over financial reporting will not be significant. Provisions related to enhanced documentation of internal controls over financial reporting apply only to insurers with more than \$ 500 million in direct

and assumed premium, and a majority of these insurers have developed the systems and procedures necessary to achieve compliance voluntarily or as a result of their status as SEC registrants.

State fiscal effect

None.

Local fiscal effect

None.

Long–range fiscal implications

None.

Notice of Hearing
Physical Therapists Affiliated
Credentialing Board
CR 08–049

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Physical Therapists Affiliated Credentialing Board in ss. 15.085 (5) (b), 227.11 (2), 448.53 (2) and 448.55 (3), Stats., and interpreting ss. 448.535 (2) and 448.55 (3), Stats, the Physical Therapists Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order revising sections PT 2.04, 3.01 and 9.02 to 9.04, relating to examination waivers, temporary licenses and continuing education.

Hearing Information

Date: July 10, 2008
Time: 9:15 A.M.
Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 121A
Madison, Wisconsin

Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708, email at pamela.haack@drl.state.wi.us. Comments must be received on or before July 14, 2008, to be included in the record of rule–making proceedings.

Agency Contact Person

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

Analysis Prepared by the Department of Regulation and Licensing.

Statutes interpreted

Sections 448.535 (2) and 448.55 (3), Stats.

Statutory authority

Sections 15.085 (5) (b), 227.11 (2), 448.53 (2) and 448.55 (3), Stats.

Explanation of agency authority

The Physical Therapists Affiliated Credentialing Board has the authority to promulgate rules under ss. 448.53 (2) and 448.55 (3), Stats.

Related statute or rule

Sections 448.53 (2) and 448.55 (3), Stats.

Plain language analysis

The proposed changes to the physical therapy rules are intended to address three separate items. To begin with, the board is repealing s. PT 2.04. That section contained a waiver provision for applicants, provided they applied prior to April 1, 2004. Because the deadline to apply for an examination waiver under that provision has expired and is therefore not applicable, the board is eliminating it. In addition, the board is extending the potential duration of a temporary license. Currently, a temporary license is only valid for three months. This proposal would allow the board to extend a temporary license twice, each for three month intervals, provided the licensee could demonstrate hardship. However, licensees would only be permitted to practice under a temporary license for nine months. The board had encountered several applicants who, for various reasons, were unable to take the examination during the required three month timeframe and thus believed that offering these extensions would accommodate those difficulties. Finally, the board has streamlined its continuing education provisions in an effort to eliminate any confusion surrounding how to calculate the required number of hours and how to determine what programs are acceptable. A new table better defines the various categories as well as the number of contact hours each may receive.

SECTION 1 repeals s. PT 2.04 since the deadline to apply for an examination waiver under that provision has expired. Section PT 2.04 applied to applicants who were eligible for an examination waiver prior to April 1, 2004.

SECTION 2 amends s. PT 3.01 (5) to allow the board the ability to extend a temporary license for reasons of hardship. Two, three–month extensions would be permitted. Licensees would only be permitted to practice under a temporary license for nine months.

SECTION 3 repeals the definition of continuing education unit (“CEU”) found in s. PT 9.02 (1) and replaces it with the term “contact hour.” Contact hour is defined as not less than 50 minutes that a licensee actually spends attending an acceptable continuing education program. This term is used throughout the section that addresses continuing education requirements.

SECTION 4 repeals the definition of “hour of continuing education” found in s. PT 9.02 (3). That term is replaced with “contact hour” as found in SECTION 3.

SECTION 5 amends s. PT 9.02 (1) and (2) by adding the requirement for both physical therapists and physical therapist assistants that four hours of their required continuing education be in the area of ethics and jurisprudence. Previously, this requirement had been included in s. PT 9.04 (2) (c).

SECTION 6 renumbers s. PT 9.04 (2) (intro.) and further amends it by referring readers of the rule to a newly numbered table that identifies various categories of continuing education.

SECTION 7 repeals s. PT 9.04 (2) (a) to (c) which referenced the old continuing education table. The table has been modified and is renumbered under this proposal. This section also identified the number of required continuing education hours for both physical therapists and physical

therapist assistants. That information is now included under s. PT 9.02 (1) and (2) and found in SECTION 5.

SECTION 8 repeals Table PT 9.04 – 1 and Table PT 9.04 – 2. A new table has instead been created. It identifies various categories of continuing education and the number of contact hours each one is eligible to receive for each category.

SECTION 9 creates Table PT 9.04. The new table modifies a few of the continuing education categories and identifies the number of contact hour limits each category is entitled to receive.

Comparison with federal regulations

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states

Minnesota: Twenty hours of continuing education are required every two years. No ethics or jurisprudence credits are required. Minnesota grants temporary permits to physical therapists (different for new graduates, physical therapists licensed in another state, and foreign educated physical therapists), but does not allow for extensions. Contact hour is defined as an instructional session of 60 minutes, excluding coffee breaks, registration, meals with or without speaker, and other social activities. Three categories of activity are defined and are based upon specified credit standards.

Illinois: Temporary practice is allowed for six months by a person in Illinois to assist in the case of medical emergency or to engage in a special physical therapy project, and who meets the qualifications for a physical therapy project and is licensed as a physical therapist in another state.

Following notification of eligibility for examination, an applicant who fails to take the examination for a license within sixty days of the notification shall forfeit his or her fee and his or her right to practice as a physical therapist or physical therapist assistant until such time as the applicant has passed the appropriate examination. Any applicant failing the examination three times in any jurisdiction will not be allowed to sit for another examination until the applicant has presented satisfactory evidence to the board of appropriate remedial work as set forth in the rules and regulations. If an applicant neglects, fails or refuses to take an examination or fails to pass an examination for a license or otherwise fails to complete the application process within three years after filing the application, the application shall be denied. However, such applicant may make a new application for examination accompanied by the required fee, and must furnish proof of meeting qualifications for examination in effect at the time of new application. One continuing education hour equals 50 minutes. Credit conversions are spelled out in the rule.

Iowa: Forty hours of continuing education are required per biennium. One hour of continuing education equals fifty minutes. Six months of supervised practice is allowed after the receipt of an application by examination. Three months of supervised practice is allowed after the receipt of an application by endorsement. Continuing education conversions are spelled out in the rule.

Michigan: Michigan does not have continuing education requirements or temporary permits. The practice of physical therapy may only be conducted by prescription of a licensed physical therapist.

Summary of factual data and analytical methodologies

The board conducted an extensive review of its rules with its legal counsel after identifying the need to clarify portions of the rule. Continuing education providers were consulted.

Most of the discussion centered on the conversion of credits for Class I and Class II Activities. The rule was revised as deemed necessary.

Analysis and supporting documents used to determine effect on small business

The effect on small business is no different from the original rule.

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

Initial Regulatory Flexibility Analysis

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling 608–266–8608.

Fiscal Estimate

Summary

The department estimates that this rule will require staff time in the Division of Professional Credentialing and Office of Legal Counsel. The one-time salary and fringe costs in the Division of Professional Credentialing and Office of Legal Counsel are estimated at \$1,200.

Anticipated costs incurred by private sector

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

Text of Proposed Rule

SECTION 1. PT 2.04 is repealed.

SECTION 2. PT 3.01 (5) is amended to read:

PT 3.01 (5) The duration of a temporary license to practice physical therapy under supervision granted under this section shall be for a period of 3 months or until the holder receives failing examination results, whichever is shorter, unless the board grants an extension of the temporary license. A temporary license may be renewed for a period of 3 months, and may be renewed a second time for a period of 3 months for reasons of hardship. Practice under a temporary license may not exceed 9 months total duration.

SECTION 3. PT 9.02 (1) is repealed and recreated to read:

PT 9.02 (1) “Contact hour” means not less than 50 minutes a licensee spends in actual attendance at or completion of acceptable continuing education.

SECTION 4. PT 9.02 (3) is repealed.

SECTION 5. PT 9.03 (1) and (2) are amended to read:

PT 9.03 Continuing education requirements. (1) Unless granted a postponement or waiver under sub. (8), every physical therapist shall complete at least 30 hours of board-approved continuing education in each biennial registration period, as specified in s. 448.55 (3), Stats. Four of the required 30 hours shall be in the area of ethics and jurisprudence.

(2) Unless granted a postponement or waiver under sub. (8), every physical therapist assistant shall complete at least 20 hours of board-approved continuing education in each biennial registration period, as specified in s. 448.55 (3), Stats. Four of the required 20 hours shall be in the area of ethics and jurisprudence.

SECTION 6. PT 9.04 (2) (intro.) is renumbered PT 9.04 (2) and is amended to read:

PT 9.04 (2) ~~Both class I and class II~~ The continuing education activities described in ~~tables PT 9.04 – 1 and PT 9.04 – 2~~ table PT 9.04 qualify for continuing education hours, except as follows:.

SECTION 7. PT 9.04 (2) (a) to (c) are repealed.

SECTION 8. Table PT 9.04 – 1 and Table PT 9.04 – 2 are repealed.

SECTION 9. Table PT 9.04 is created to read:

Table PT 9.04

ACTIVITY	CONTACT HOUR LIMITS
(a) Successful completion of relevant academic coursework.	No limit. [10 contact hours = one semester credit; 6.6 contact hours = quarter credit]
(b) Attendance at seminars, workshops, lectures, symposia, and professional conferences which are sponsored or approved by acceptable health–related or other organizations including, but not limited to, the American Physical Therapy Association or the Wisconsin Physical Therapy Association.	No limit.
(c) Successful completion of a self–study course or courses offered via electronic or other means which are sponsored or approved by acceptable health–related or other organizations including, but not limited to, the American Physical Therapy Association or the Wisconsin Physical Therapy Association.	No limit.
(d) Earning a clinical specialization from the American Board of Physical Therapy Specialties or other recognized clinical specialization certifying organizations.	Up to 12 contact hours for initial certification or for recertification.
(e) Authorship of a book about physical therapy or a related professional area.	Up to 12 contact hours for each book.
(f) Authorship of one or more chapters of a book about physical therapy or a related professional area.	Up to 6 contact hours for each chapter.
(g) Authorship of a presented scientific poster, scientific platform presentation, or published article.	Up to 6 contact hours for each poster, platform presentation or refereed article.
(h) Presenting seminars, continuing education courses, workshops, lectures or symposia which have been approved by recognized health–related organizations including, but not limited to, the American Physical Therapy Association or the Wisconsin Physical Therapy Association. <u>Note:</u> No additional hours are given for subsequent presentations of the same content. Substantive course revisions may be counted but are limited to the extent of the revision.	No limit.
(i) Teaching in an academic course in physical therapy as a guest lecturer. <u>Note:</u> No additional hours are given for subsequent presentations of the same content. Substantive course revisions may be counted but are limited to the extent of the revision.	No limit. [10 contact hours = one semester credit; 6.6 contact hours = one quarter credit]
(j) Teaching in an academic course in physical therapy. <u>Note:</u> No additional hours are given for subsequent presentations of the same content. Substantive course revisions may be counted but are not limited to the extent of the revision.	No limit. [10 contact hours = one semester credit; 6.6 contact hours = one quarter credit]
(k) Successful completion in a clinical residency program credentialed by the American Physical Therapy Association or other recognized credentialing organization.	No limit.
(l) Attending employer provided continuing education, including video and non–interactive on–line courses.	Up to 15 contact hours for physical therapists. Up to 10 contact hours for physical therapist assistants.
(m) Authoring an article in a non–refereed publication.	Up to 5 contact hours.
(n) Developing alternative media materials, including computer software, programs, and video instructional material.	1 contact hour per product. Up to 5 contact hours.
(o) Serving as a clinical instructor for internships with an accredited physical therapist or physical therapist assistant educational program.	Up to 15 contact hours for physical therapists. Up to 10 contact hours for physical therapist assistants.
(p) Serving as a supervisor for students fulfilling clinical observation requirements.	1 contact hour per contact hour with students, up to 5 contact hours.
(q) Participating in a physical therapy study group of 2 or more physical therapist or physical therapist assistants or in an interdisciplinary study group of members of at least 2 disciplines meeting on a topic relevant to the participants' work.	Up to 2 contact hours per study group.
(r) Participating as a resident or as a mentor in a formal nonacademic mentorship.	1 contact hour per each 8 contact hours for both the resident and mentor, up to 5 contact hours.
(s) Attending a scientific poster session, lecture panel, or a symposium.	Up to 2 contact hours.
(t) Serving as a delegate to the American Physical Therapy Association House of Delegates, on a professional committee, board, or task force.	Up to 5 contact hours.

Notice of Hearing
Public Instruction
CR 08-052

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.88 (1m) (b) and 227.11 (2) (a), Stats., and interpreting s. 115.88 (1m) (b), Stats., the Department of Public Instruction will hold a public hearing to consider emergency and proposed permanent rules, revising Chapter PI 30, relating to state special education aid for certain pupil services personnel.

Hearing Information

July 14, 2008 Madison
3:00 – 4:30 p.m. GEF 3 Building
125 South Webster St.
Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Stephanie Petska, Director, Special Education at (608) 266-1781 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Proposed Rule

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

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

Submission of Written Comments

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than July 17, 2008, will be given the same consideration as testimony presented at the hearing.

Agency Contact Person

Stephanie Petska, Director, Special Education,
stephanie.petska@dpi.wi.gov, (608) 266-1781.

Analysis Prepared by the Dept. of Public Instruction

Statute interpreted

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

Statutory authority

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

Explanation of agency authority

Section 115.88 (1m) (b), Stats., directs the department to promulgate rules establishing the percentage of the salaries of licensed school nurses, licensed school social workers, licensed school psychologists, and licensed school counselors that are eligible for state aid reimbursement.

The proposed rules specify these determinations.

Related statute or rule

Section 115.88 (1m), Stats.

Plain language analysis

Currently, the salaries and benefits of school nurses, social workers, psychologists, and counselors who work with special education are among the costs eligible for reimbursement through special education aid. Districts have been required to report full-time equivalency for the identified positions to determine reimbursement.

2007 Wisconsin Act 221 gives the department the authority to determine the percentage of work time that each of the personnel categories spends providing services to children with disabilities and promulgate rules establishing the percentage of the salaries that these personnel categories may be certified as costs eligible for reimbursement. As required by the Act, the department has established the average percentage of work time that each category spends providing services to children with disabilities by reviewing past data collected from eligible entities. In doing so, the department has determined that the percentage of the salaries that may be certified as costs eligible for reimbursement are as follows:

School nurses; 29 percent.
School social workers; 59 percent.
School psychologists; 84 percent.
School counselors; 10 percent.

If funds are insufficient, the reimbursement shall be prorated.

The rules specify these salary reimbursement percentages for pupil services personnel and should reduce the workload involved by eligible entities by no longer requiring detailed full-time equivalency information to be reported for reimbursement.

The rule first applies to state aid distributed in the 2008-09 school year. Emergency rules were promulgated by the department effective May 30, 2008, in order to establish instructions this spring as to how school districts are to account for these pupil services staff on special education claim forms.

Comparison with federal regulations

None

Comparison with rules in adjacent states

Illinois, Iowa, Michigan and Minnesota do not have administrative rules relating to the payment of salaries of licensed school nurses, social workers, psychologists, and counselors.

Summary of factual data and analytical methodologies

In the 2005-07 biennial budget, DPI requested and the Legislature and Governor approved adding licensed school nurses and licensed school guidance counselors as eligible categories for cost reimbursement under special education categorical aid. At that time it had come to DPI's attention that several school districts had hired a school psychologist rather than a school counselor simply because the psychologist was eligible for partial reimbursement by special education categorical aid whereas the counselor was not. Further, students with disabilities were receiving services from school nurses, contributing to the high cost of special education, but such services were not reimbursable with categorical aid. Adding the school nurses and school guidance counselors was proposed to help ensure special education categorical aid was not being abused.

Prior to 1999, the state statute regarding special education categorical aid provided that school psychologists' and school social workers' eligible costs would be reimbursed at 51%, and special education teachers and other staff at 63%. This difference reflected the fact that teachers were spending their entire FTE instructing students with disabilities. Pupil

services staff were generally serving all students, including students with disabilities. In 1999, the Governor removed the percentages because the state had not reimbursed at these rates since 1985. Since the percentages were removed, DPI staff considered whether to: (1) use the same rate of reimbursement for all positions, (2) require districts to report FTE for the identified positions to determine reimbursement, or (3) determine a standardized reimbursement rate for each profession. The second alternative, requiring districts to report FTE, was selected. Since that time, however, districts' reports of eligible special education costs have been quite varied. In fact, there is significant concern that some districts are submitting inaccurate claims. Due to this concern, DPI staff and some school districts are far from satisfied regarding the current practices of reporting eligible costs.

Under 2007 Wisconsin Act 221, DPI would establish an "eligible costs" rate that is standard for each profession (the third alternative that was considered in 1999) (x% of nurses' salary and fringe are eligible, y% of counselors' salary and fringe are eligible, z% of social workers' salary and fringe are eligible, etc.) instead of having districts report actual FTE for each professional. Reviews of the Fall Staffing Report and Special Education Aid claims indicate that the rates vary significantly among professions. For some professions, rates may vary significantly within professions. DPI would, therefore, use average percentage of work times.

The Wisconsin Council of Administrators of Special Services (WCASS), and the other members of the School Administrators Alliance (SAA) supported the Act via 2007 Assembly Bill 906. Those include WASDA, AWSA and WASBO.

Under the new law and proposed rule, implementing this reimbursement will become easier for school districts and other eligible entities. Eligible entities will simply report the number of eligible pupil services personnel to receive reimbursement (based on the percentage determined by the department by rule) rather than report the full-time equivalency of each eligible pupil services personnel position.

Note: Current claims are prorated at 28%, and without a substantial increase in the special education categorical aid appropriation, such prorating will continue.

Analysis and supporting documents used to determine effect on small business

N/A

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Fiscal Estimate

Summary

Currently, 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.

This rule specifies the average percentage of work time that each of the personnel categories specified above spends providing services to children with disabilities, and provides

that the percentage of the salaries of personnel in that category is the cost eligible for reimbursement from the state.

State fiscal effect

There will be no overall fiscal effect for the department. The rules will not change the amount of special education categorical aid. It could simply change the distribution of the aid to school districts.

Local fiscal effect

The rules could have an effect on school districts. Since districts are currently reporting the percentage of time that each professional is working with students with disabilities, once specific percentages of each profession are in administrative rules, districts could gain or lose special education categorical aid. For example, a district that has been reporting their school psychologist as working 100% time with students with disabilities could lose aid as the rule only allows for 84% reimbursement. On the other hand, a district that has been reporting their school psychologist as working 25% time with students with disabilities could gain aid.

Private sector fiscal effect

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

**Notice of Hearing
Transportation
CR 08-048**

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1), 227.11 (2) (a) and 348.25 (3) and (8) (e), Stats., interpreting s. 348.25 (8) (e), Stats., the Department of Transportation will hold a public hearing to consider the amendment of Chapter Trans 250, Wis. Adm. Code, relating to internet and telephone call-in fees.

Hearing Information

Date and Time:

July 9, 2008
11:00 a.m.

Location:

Hill Farms State Transportation
Bldg., Room 144-B
4802 Sheboygan Avenue
Madison

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

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

Submission of Written Comments and Agency Contact Person

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or e-mail: carson.frazier@dot.state.wi.us.

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

Analysis Prepared by the Department of Transportation

Statutes interpreted

Section 348.25 (8) (e), Stats.

Statutory authority

Sections 85.16 (1), 227.11 (2) (a) and 348.25 (3) and (8) (e), Stats.

Explanation of agency authority

The Department is authorized by s. 348.25 (8) (e), Stats., to administer issuance of permits for overweight and over-sized transport, including charging a fee for issuance by internet and telephone call-in.

Related statute or rule

Sections 348.25, 348.26 and 348.27, Stats., and ch. Trans 250.

Plain language analysis

Section Trans 250.04 establishes the fee for obtaining an oversize and/or overweight routing permit or permit amendment that is applied for or issued by Internet or telephone call-in procedures. 2003 Wis. Act 33, Section 2604, amended s. 348.25(8)(e), Stats., to provide that the amount of the fee is to be established by the Department by rule, and shall approximate the cost to the Department for providing this service. The current \$5 fee was based on the Department's cost to provide telephone and internet service in 2003. Recently, the Department has determined that the current actual cost per transaction is about \$1.49, but that is subject to change in the future as the Department's annual cost assessment indicates.

This rule making amends s. Trans 250.04 to establish that the Department shall determine the fee annually to approximate the cost to the Department for providing the transaction, not to exceed \$5 per transaction. In determining the fee per transaction for the current year, the Department shall review, from the previous year, the total cost of the service, the number of transactions, and other material factors. The current fee shall be published on the Department's internet web site and in communication materials distributed to eligible motor carriers. This approach is modeled on ch. Trans 196 language that was promulgated in 2005 for Internet and phone registration renewal transactions.

Comparison with federal regulations

No federal regulations relate to this fee.

Comparison with rules in adjacent states

Michigan: Michigan currently accepts credit cards for some transactions, and does not charge a convenience fee. Michigan anticipates expanding credit card acceptance without imposing a convenience fee.

Minnesota: Minnesota accepts credit cards, and does not charge a convenience fee. If customer uses a VitalChek product or interface, the customer pays that company's processing fee directly.

Illinois: Illinois accepts credit cards and does not charge a convenience fee for credit card usage per se, but does charge \$1 fee for transmission of permit via fax, regardless of method of payment.

Iowa: Iowa does not accept credit cards directly, as Iowa by law cannot use tax revenue to pay merchant fee nor create a related service fee. In Iowa, a private third-party vendor has a terminal in the Iowa main office, for use by customers who wish to pay oversize/overweight permit fees using credit

cards. The vendor charges a fee based on cost of the transaction; the minimum fee is \$6.

Summary of factual data and analytical methodologies

The Department has successfully implemented fee calculation and publication under ch. Trans 196. Under the proposed rule amendment, the convenience fee for oversize/overweight permit applications by internet and telephone call-in procedures will be treated similarly.

The Department has the capability to determine the fee annually to approximate the cost to the Department for providing the transaction, not to exceed \$5 per transaction. In determining the fee per transaction for the current year, the Department shall review, from the previous year, the total cost of the service, the number of transactions, and other material factors.

The Department recognizes that if the cost were to exceed the amount that the Legislature has previously approved (\$5 per transaction), the Department must seek Legislative oversight through the rule making process.

Analysis and supporting documentation used to determine effect on small businesses

Small businesses represent most motor carriers that apply for oversize/overweight permits, using the Internet or telephone call-in procedure. In 2007, almost 28,000 oversize/overweight charge-card transactions occurred. The average permit transaction amount was just under \$60, and the average transaction cost to DOT was \$1.49.

Initial Regulatory Flexibility Analysis

The Department concludes that reduction of the convenience fee will reduce the cost to small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal Estimate

Summary

The Department estimates that because it is prohibited from charging fees to any department of a county, town, or municipality or any branch of the United States government, or any foreign government for oversize/overweight permits by s. Trans 250.08, there will be no fiscal impact on the liabilities or revenues of any county, town, municipality, nor any branch of the United States government, nor any foreign government.

Anticipated costs incurred by private sector

The Department estimates that since oversize/overweight permit application by Internet or telephone call-in is a minor portion of state or private sector activity, there will be no fiscal impact on state or private sector revenues or liabilities.

Text of Proposed Rule

SECTION 1. Trans 250.04 is amended to read:

Trans 250.04 Internet fee and telephone call-in fee. In addition to any other applicable fee under this chapter, the department shall charge a \$5 fee for each permit or amendment which is applied for or issued by the internet procedure or the telephone call-in procedure. The fee shall be determined by the department annually to approximate the cost to the department for providing the transaction, not to exceed \$5.00. In determining the fee per transaction for the current year, the department shall review, from the previous year, the total cost of the service, the number of transactions, and other material factors. The current fee shall be published on the department's internet web site and in communication

materials distributed to eligible motor carriers. Only one internet fee or telephone call-in fee shall be charged when a permit or amendment is applied for and issued by the internet procedure or the telephone call-in procedure.

Notice of Hearing
Workforce Development
Family Supports, Chs. DWD 12-59
EmR0814

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.155 and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider an emergency rule relating to the repeal of EmR0807, the emergency rule affecting section DWD 56.04 that was effective March 30, 2008, relating to child care enrollment underutilization.

Hearing Information

June 27, 2008 Friday 10:00 a.m.	MADISON G.E.F. 1 Building Room H405 201 E. Washington Avenue
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Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

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

Copies of Proposed Rule

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

Elaine Pridgen
 Office of Legal Counsel
 Dept. of Workforce Development
 P.O. Box 7946
 Madison, WI 53707-7946
 (608) 267-9403
elaine.pridgen@dwd.state.wi.us

Submission of Written Comments

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than June 27, 2008, will be given the same consideration as testimony presented at the hearing.

Agency Contact Person

Laura Saterfield, Child Care Section Chief,
laura.saterfield@dwd.state.wi.us, (608) 266-3443.

Analysis Prepared by the Department of Workforce Development

Explanation of agency authority

The Department administers the child care subsidy program under s. 49.155, Stats., and reimburses child care providers for services provided pursuant to s. 49.155 (3m), Stats.

Summary of the emergency rule

This rule repeals the emergency rule on child care enrollment underutilization that was effective March 30, 2008.

The child care enrollment underutilization rule attempted to control costs by reducing payments to licensed child care providers for authorized child care services that were significantly underused. The rule provided that for any week in which a child whose authorized payments were on an enrollment basis attended less than 50% of the authorized hours of care, payment was made on the basis of actual hours of attendance used, unless the agency determined that the absence was for a reason approved by the Department, such as short-term illness of the child or death in the family. The rule also increased the penalties for a provider who submitted false or inaccurate attendance reports.

2007 Wisconsin Act 226 provides \$18.6 million to address the fiscal year 2007-08 Wisconsin Shares funding shortfall. The enrolled budget repair bill contains language that would have prohibited the use of a child care underutilization methodology in virtually any situation. The Governor vetoed this language. The Governor's veto message directs the Department of Workforce Development to suspend the current attendance-based rule for the remainder of fiscal year 2007-08 since Act 226 provides funding to address the shortfall. The Department is repealing the enrollment underutilization emergency rule and will be withdrawing the corresponding proposed permanent rule.

When the Wisconsin Shares program is transferred to the new Department of Children and Families effective July 1, the new department will retain the authority to implement a child care enrollment underutilization rule, given the possibility of a future funding shortfall.

Summary of factual data and analytical methodologies

The Department is repealing the child care enrollment underutilization rule in response to funding provided in 2007 Wisconsin Act 226 and the Governor's veto message.

Summary of related federal regulations

There are no applicable federal regulations.

Comparison with rules in adjacent states

Michigan. A provider may only receive payment for a child's hours of attendance, except for absences due to the child's illness, not to exceed 2 consecutive weeks, and state holidays.

Illinois. Payment to licensed and license-exempt child care centers are based on authorized days if the total of days attended for all publicly-funded children at a center location are 80% of the authorized days for the month.

Payment to licensed home providers are based on authorized days if the total of days attended for all children in a family are 80% of the family's authorized days for the month.

Payment to license-exempt home providers are based only on attendance.

Iowa. Payment is based on authorized days with payment allowed for a child not in attendance not to exceed 4 days per calendar month.

Minnesota. Payment is based on authorized days except child care providers may not be reimbursed for more than 25 full-day absent days per child, excluding holidays, in a fiscal year, or for more than 10 consecutive full-day absent days, unless the child has a documented medical condition that causes more frequent absences.

Analysis used to determine effect on small businesses

This rule repeals the child care enrollment underutilization rule based on funding provided in 2007 Wisconsin Act 226 and direction in the Governor's veto message.

Initial Regulatory Flexibility Analysis

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

Submittal of Proposed Rules to the Legislature

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

Insurance
CR 07-108

A rule-making order revising section Ins 2.19, relating to sales of life insurance and annuities to the military and affecting small business.

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 08-011

A rule-making order revising Chapters NR 10, 11, 17 and 45, relating to hunting and trapping regulations and the use of department managed lands.

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 08-014

A rule-making order revising Chapter NR 58, relating to the implementation and administration of grants for endangered resources.

Transportation
CR 08-029

A rule-making order revising Chapters Trans 137 to 139, relating to motor vehicle dealer franchise operations, recordkeeping, and trade practices.

Rule Orders Filed with the Legislative Reference Bureau

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

Insurance **CR 08-006**

A rule-making order revising sections Ins 17.01 and 17.28, relating to fiscal year 2009 fund fees and mediation panel fees. Effective 7-1-08.

Natural Resources *Fish, Game, etc., Chs. NR 1—* **CR 07-013**

A rule-making order creating section NR 45.075, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department. Effective 8-1-08.

Natural Resources *Air Pollution Control, Chs. NR 400—* **CR 07-076**

A rule-making order revising Chapter NR 445, relating to hazardous air pollutant emissions associated with agricultural waste and affecting small business. Effective 8-1-08.

Public Instruction **CR 08-001**

A rule-making order creating Chapter PI 33, relating to grants for nursing services. Effective 8-1-08.

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