Wisconsin Administrative Register

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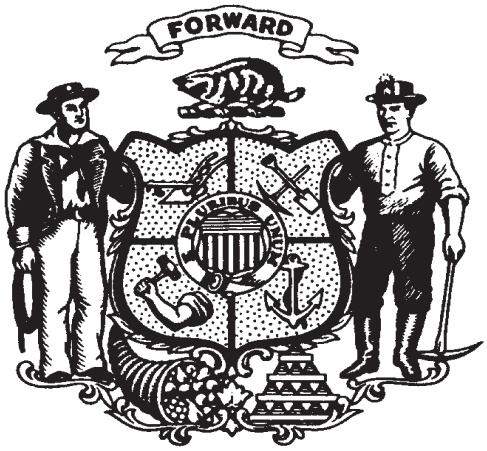

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Emergency Rules Now in Effect

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. **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**

2. **EmR0822** − 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 farm−raised deer herd as brucellosis−free or tuberculosis−free, or both, based on herd test results provided by the farm−raised deer keeper. Certification is voluntary, but facilitates sale and movement of farm−raised 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 farm−raised deer keepers 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 farm−raised deer keepers this year, pending the adoption of permanent rules.

Publication Date:	**July 9, 2008**
Effective Date:	**July 9, 2008**
Expiration Date:	**December 6, 2008**
Hearing Date:	**August 1, 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**
Extension Through:	**December 1, 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**
Hearing Date:	**July 24, 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. ElBd 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 ElBd 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**

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**
Hearing Date:	**July 23, 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:	**August 18, 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**
Extension Through:	**August 26, 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**
Extension Through:	**September 20, 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**
Hearing Date:	**July 23, 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 (2)

1. **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**

2. **EmR0819** − A rule adopted revising **s. RL 161.04,** relating to examinations for substance abuse professionals.

Finding of Emergency

The department has made a finding of emergency. The current rules require an applicant for a clinical substance abuse counselor credential to pass an oral examination. The company that produced that examination is not giving that examination after June 1, 2008. This emergency rule creates a time period for a transition to enable a category of applicants to get a clinical substance abuse counselor credential. Persons holding a clinical substance abuse counselor credential can apply for a supervisory credential. There is a strong need for more supervisors in this field because services can only be provided under supervision. This rule will enable more applicants to receive a supervisor credential and is therefore necessary to maintain the health, safety and welfare of the public.

Publication Date: **June 18, 2008**
Effective Date: **June 18, 2008**
Expiration Date: **November 15, 2008**

Revenue

EmR0820 − Rule adopted creating ss. **Tax 8.03 and 8.05**, relating to the registration of wine collectors, establishing standards of eligibility for registration as a wine collector, specifying the form and manner of notice required prior to the sale of wine by a wine collector, and the creation and organization of small winery cooperative wholesalers.

Exemption From Finding of Emergency

The legislature by Section 50 of 2007 Wisconsin Act 85 provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: **June 26, 2008**
Effective Date: **June 26, 2008**
Expiration Date: **November 23, 2008**

Transportation

EmR0818 − A rule adopted creating **Ch. Trans 263**, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

Exemption From Finding of Emergency

The Legislature, by 2007 Wisconsin Act 171, Section 6 (2), provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: **July 1, 2008**
Effective Date: **July 1, 2008**
Expiration Date: **July 1, 2009 or the date on which permanent rules take effect, whichever is sooner.**
Hearing Date: **July 30, 2008**

Workforce Development (4)

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**

4. **EmR0821** − Rules adopted creating **ss. DWD 40.02 (12m), 40.05, and DWD 40 Appendix D**, relating to establishment of birth cost orders based on child support guidelines.

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:

The federal Office of Child Support Enforcement (OCSE) has notified Wisconsin that OCSE will not certify the state's request for federal income tax refund offset for birth cost orders that have not been set in accordance with the child support guidelines in Chapter DWD 40, which take into consideration the payer's ability to pay.

Federal income tax refund offset is one of the primary tools for collection of birth cost orders owed to the State of Wisconsin. In calendar year 2007, the child support program collected $11,481,000 in birth costs through federal income tax refund offset. Of the nearly $11.5 million collected, approximately $6.62 million was returned to the federal government to reimburse Medicaid costs, $1.72 million was used by county child support agency programs to benefit children in the state, and the remaining $3.14 million was returned to the state Medicaid program.

Publication Date:	**June 27, 2008**
Effective Date:	**June 27, 2008**
Expiration Date:	**November 24, 2008**
Hearing Date:	**July 29, 2008**

Scope Statements

Government Accountability Board

Subject

Creates section GAB 15.05, relating to the establishment of blind trusts by candidates and public officials to minimize potential conflicts of interest with respect to the assets transferred into those trusts.

Objective of the Rule

The Government Accountability Board is considering the promulgation of rules allowing the use of blind trusts that would relieve state public officials and others who are required to file Statements of Economic Interests, of the obligation to report investments held in such trusts for the duration of the officials' public service and would remove those assets from the officials' active management.

Policy Analysis

Persons who are required to file a statement of economic interests with the Government Accountability Board, including candidates for public office and public officials, may own assets that present questions of conflict of interest with respect to persons and organizations regulated by the official or with respect to decisions that the official has to make. To avoid or minimize those conflicts of interest, the proposed rule would allow candidates, and public officials required to file a statement of economic interests, to place assets in a trust over which the officials would not exercise direct management.

Statutory Authority

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

Entities Affected by the Rule

Public officials and candidates who are required to file a Statement of Economic Interests with the Government Accountability Board and who have assets or financial interests which the officials or candidates believe may pose a potential conflict of interest with matters over which they may directly or indirectly affect decision−making.

Comparison with Federal Regulations

The principal federal conflict of interest law provides that an official who administers federal law should not take any official action on, or make recommendations concerning any particular governmental matter in which that official, or one closely associated with the official, has a personal "financial interest." (18 U.S.C. § 208.)

Remedial action which may be required by ethics officials to resolve identified conflicts of interest with respect to certain assets may include divestiture, establishment of a qualified blind trust, procurement of conflict of interest waivers, specific written recusal instruments, and requests for voluntary transfer or reassignment. (5 U.S.C. app. §106(b)(3); 5 C.F.R. § 2634.605(b)(5)(ii).

In some instances, the establishment of a "qualified blind trust" may be used as a conflict of interest avoidance device as an alternative to outright "divestiture" of particular assets or other measures.

The nature of a "blind trust," generally, is such that the federal official will have no control over, will receive no communications about, and will (eventually as existing assets are sold and new ones obtained by the trustee) have no knowledge of the identity of the specific assets held in the trust. As such, once a blind trust is established and new assets obtained, an official will not need to (and will not be able to) identify the particular assets in the "blind trust" in future financial disclosure reports, and such assets will not be considered "financial interests" of the official for disqualification purposes. (5 U.S.C. app. § 102(f)(4)(A); 5 C.F.R. § 2634.401(ii).

The conflict of interest theory under which the blind trust provisions operate is that since the Government officer will not know the identity of the specific assets in the trust, those financial interests could not act as influences on his or her official decisions, thus avoiding real or apparent conflicts. Assets *originally* placed into the trust will, of course, be known to the official, and therefore will generally continue to be "financial interests" of the public official for conflict of interest purposes until the trustee notifies the official "that such asset has been disposed of, or has a value of less than $1,000." For a blind trust to be effective as a conflict of interest avoidance device the law recognizes that the official must be shielded from knowledge and control of the assets in the trust by making the trust truly "blind," and by assuring that the trustee is actually independent of and autonomous from direction or influence of the reporting official.

The federal statute therefore: (1) requires the trustee to be an independent professional and not be "associated" or "affiliated" with the official or any interested party; (2) requires assets to be placed in the trust with no restrictions upon their sale or disposition at the discretion of the trustee; (3) prohibits communications from the trustee to interested parties (other than to notify when an original asset has been disposed of or becomes valued at less than $1,000, and to give information on the overall value and income of the entire trust); (4) prohibits interested parties from attempting to learn the identification of the assets in the trust; and (5) limits communications from the official to the trustee (other than instructions on distributions from the trust) except when in writing concerning general financial needs, new prohibitions on the holding of an asset, or new requirements to sell an original asset "due to the subsequent assumption of duties" of the reporting official.

Estimate of Time Needed to Develop the Rule

At least 40 hours of state employees' time.

Submittal of Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection

CR 08−067

On June 30, 2008, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule−making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter ATCP 123, relating to customer access to subscription video services.

Agency Procedure for Promulgation

A public hearing is scheduled for August 26, 2008. The Department's Trade and Consumer Protection Division is primarily responsible for this rule.

Contact Information

Michelle Reinen

(608) 224−5160

Public Service Commission

CR 08−070

On July 3, 2008, the Public Service Commission submitted a proposed rule−making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter PSC 116, relating to a fuel cost rate adjustment process.

Agency Procedure for Promulgation

A public hearing will be held on Monday, August 4, 2008, at 9:30 a.m. at the Public Service Commission building at 610 North Whitney Way, Madison, Wisconsin. The Gas and Energy Division of the Commission is the organizational unit responsible for the promulgation of the rule.

Contact Information

James Wagner
(608) 267−9768
or
Michael Ritsema
(608) 267−9296

Revenue

CR 08−065

On June 23, 2008, the Department of Revenue submitted a proposed rule−making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates sections Tax 8.03 and 8.05, relating to wine collectors and small winery cooperative wholesalers.

Agency Procedure for Promulgation

A public hearing will be scheduled at a later time.

Contact Information

Dale Kleven
Income, Sales and Excise Tax Division
(608) 266−8253
dale.kleven@revenue.wi.gov

Workforce Development

Family Supports, Chs. DWD 12−59

CR 08−066

On June 26, 2008, the Department of Workforce Development submitted a proposed rule−making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter DWD 40, relating to the establishment of birth cost orders based on child support guidelines.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 29, 2008. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Family Supports.

Contact Information

Elaine Pridgen
(608) 267−9403
elaine.pridgen@wisconsin.gov

Workforce Development

Family Supports, Chs. DWD 12−59

CR 08−068

On June 30, 2008, the Department of Workforce Development submitted a proposed rule−making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter DWD 16, relating to emergency assistance for families with needy children.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 5, 2008. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Family Supports.

Contact Information

Elaine Pridgen
(608) 267−9403
elaine.pridgen@wisconsin.gov

Workforce Development

Labor Standards, Chs. DWD 270−279

CR 08−069

On June 30, 2008, the Department of Workforce Development submitted a proposed rule−making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter DWD 272, relating to increasing Wisconsin's minimum wages and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 6, 2008. The organizational unit responsible for the promulgation of the proposed rules is the DWD Equal Rights Division.

Contact Information

Howard Bernstein
(608) 266−9427
howard.bernstein@dwd.state.wi.us

Rule−Making Notices

Notice of Hearing
Agriculture, Trade and Consumer Protection
EmR0822

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on an emergency rule to amend Chapter ATCP 10, Wis. Adm. Code, relating to diseases of fish and farm raised deer.

Hearing Date and Location

August 1, 2008 − Friday
1:30 p.m. to 2:30 p.m.
Dept. of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
First Floor – Room 106 (Boardroom)
Madison, Wisconsin 53718

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by July 18, 2008, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708−8911, telephone (608) 224−4883. Alternatively, you may contact the DATCP TDD at (608) 224−5058. Handicap access is available at the hearings.

Copies of Proposed Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224−4883 or emailing Melissa.mace@wi.gov. Copies will also be available at the hearings. To view the proposed rule online, go to:

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

Submission of Written Comments

DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until Friday, August 8, 2008 for additional written comments. Comments may be sent to the Division of Animal Health at the address above, by email to Melissa.mace@wi.gov or online at https://apps4.dhfs.state.wi.us/admrules/public/Home

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

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

The Department of Agriculture, Trade and Consumer Protection ("DATCP") administers Wisconsin's animal health and disease control programs, including programs to control diseases among fish and farm−raised deer. DATCP regulates fish farms, including fish farms operated by the Department of Natural Resources ("DNR"), and regulates the import, movement and disease testing of fish. DATCP also regulates farm−raised deer herds and the import, movement and disease testing of farm−raised deer.

This emergency rule modifies current health certification and disease testing requirements for fish and farm−raised deer. DATCP adopted an initial emergency rule on these issues on October 31, 2007, pending the adoption of a "permanent" rule. The first emergency rule expired on May 28, 2008. A second emergency rule is necessary, because the proposed "permanent" rule is not yet in effect.

This second emergency rule is similar but not identical to the initial emergency rule. Among other things, this rule creates a limited exemption from VHS testing requirements when fish or fish eggs are reintroduced to the same water body from which they were collected, for the purpose of increasing or rehabilitating a desirable sport fish population. The reintroduction must be approved by DNR and DATCP.

Statutes interpreted

Sections 93.07 (10), 95.55 and 95.60, Stats.

Statutory authority

Sections 93.07 (1) and (10), 95.55 (6), 95.60 (2) (c), (3), (4) (c) and (4s), and 227.24, Stats.

Explanation of statutory authority

DATCP has broad general authority, under s. 93.07(1), Stats., to adopt rules interpreting statutes under its jurisdiction. DATCP also has broad authority under s. 93.07(10), Stats., to adopt rules and issue orders to protect the health of animals, and to prevent, control and eradicate communicable diseases among animals. DATCP has specific authority, under ss. 95.55 and 95.60, Stats., to regulate farm−raised deer and fish.

Under s. 227.24, Stats., DATCP may adopt a temporary emergency rule, pending the adoption of "permanent" rules, if preservation of the public peace, health, safety or welfare makes it necessary to put the rule into effect before the "permanent" rule can take effect.

Rule content

Overview

This emergency rule does all of the following.

- Adds new viral hemorrhagic septicemia (VHS) testing requirements for all of the following fish and fish eggs if they are of a known VHS−susceptible species and were either (1) collected from a wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or eggs of *any* species collected from a wild source within the preceding 12 months:
  - Fish or fish eggs stocked into Wisconsin public waters. This rule provides a limited exemption for fish or fish eggs that are reintroduced to the same water body from which they were collected (see below).
  - Fish moved from Wisconsin fish farms, unless they are moving to a retail food establishment or restaurant, or between fish farms registered by the same person.
  - Fish distributed by a bait dealer for use as bait. This rule also prohibits any person from selling bait fish if the seller has reason to know that the bait fish are affected with VHS or another reportable disease.
- This rule provides a limited exemption from VHS and other disease testing requirements for fish or fish eggs that are reintroduced to the same water body from which they were collected, provided that all of the following apply (a

veterinarian or fish health inspector must still issue a fish health certificate based on a visual examination):

- DATCP and DNR approve the reintroduction.
- The fish or fish eggs are not commingled with fish or fish eggs from any other water source.
- The fish or fish eggs are reintroduced into the same lake from which they were collected, or at the same point or a downstream point in the same river system from which they were collected.
- The fish or fish eggs are reintroduced within 30 days after they are collected, or within 30 days after the fish eggs hatch, whichever is later.
- The fish or fish eggs are reintroduced for the purpose of increasing or rehabilitating the population of a desirable sport fishing species.

- Clarifies that VHS and other routine fish disease testing requirements do not apply when fish farm operators (including DNR) move fish or fish eggs between Wisconsin fish farms registered by the same operator. Current rules will continue to prohibit an operator from moving fish between the operator's registered fish farms if the operator has reason to know that the fish are affected with VHS or another reportable disease.
- Provides that a fish health certificate covering a fish farm or fish shipment is automatically voided if fish or fish eggs not covered by a valid fish health certificate are added to the covered fish farm or fish shipment.
- Extends brucellosis−free certification of farm−raised deer herds, from 2 years to 3 years, consistent with tuberculosis−free herd certification. That allows participating herd owners to conduct simultaneous tests for both diseases.
- Reduces the number of whole herd tests required to certify a farm−raised deer herd as a brucellosis−free herd, from 3 whole herd tests to 2 whole herd tests, consistent with tuberculosis−free herd certification.

Disease Testing of Fish

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 and Milwaukee. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms.

Current DATCP rules require health certificates for (1) fish and fish eggs (including bait) imported into the state, (2) fish and fish eggs stocked into Wisconsin public waters, and (3) fish and fish eggs moved between Wisconsin fish farms. *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 any of the following:

- Fish or fish eggs stocked into Wisconsin public waters from *Wisconsin* sources.
- Bait fish or fish eggs originating from *Wisconsin* sources.
- Fish or fish eggs moved *between Wisconsin* fish farms.
- Non−salmonids imported from states (such as Minnesota) where VHS has not yet been found.

Because VHS has now been found in Wisconsin public waters, 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 add VHS testing requirements by emergency rule, pending the adoption of a "permanent" rule.

This emergency rule expands current VHS testing requirements. Under this emergency rule, a fish health certificate and VHS testing are required for all of the following fish and fish eggs if they are of a *known VHS−susceptible species* identified by the United States department of agriculture (USDA) and were either (1) collected from a wild source in any state within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source in any state within the preceding 12 months:

- Fish or fish eggs stocked into Wisconsin public waters. There is a limited exemption (see below) for fish or fish eggs reintroduced to the same water body from which they are collected.
- Fish moved from Wisconsin fish farms, unless they are moved to a retail food establishment or restaurant, or between fish farms registered by the same person.
- Fish or fish eggs distributed by a bait dealer for use as bait. The bait fish testing requirement will initially apply to emerald shiners (a known VHS−susceptible species), but will *not* initially apply to other major bait species such as fathead minnows, white suckers and golden shiners (which are not yet known to be VHS−susceptible). However, it could eventually apply to other species if USDA finds that those species are also VHS−susceptible. A retail bait dealer is not required to conduct duplicate tests on fish previously tested by a wholesale bait dealer.

This emergency rule also does the following:

- Prohibits any person from selling bait fish *of any kind* if the seller has reason to know that the bait is affected with VHS or another reportable disease.
- Provides that a fish health certificate covering a fish farm or fish shipment becomes immediately void if fish or fish eggs not covered by a valid fish health certificate are added to the covered fish farm or fish shipment.

Reintroducing Fish to Waters of the State

Under this rule, fish or fish eggs reintroduced to the same public water body from which they are collected are exempt from VHS and other disease testing requirements if all of the following apply (a veterinarian or fish health inspector must still issue fish health certificate based on a visual examination):

- DATCP issues a permit for the reintroduction.
- DNR approves the collection and reintroduction.
- The fish or fish eggs are not commingled with fish or fish eggs from any other water source.
- The fish or fish eggs are reintroduced into the same lake from which they were collected, or at the same point or a downstream point in the same river system from which they were collected.
- The fish or fish eggs are reintroduced within 30 days after they are collected, or within 30 days after the fish eggs hatch, whichever is later.
- The fish or fish eggs are reintroduced for the purpose of increasing or rehabilitating the population of a desirable sport fishing species.

Operators Moving Fish Between Their Own Fish Farms

This emergency rule clarifies that VHS and other routine disease testing requirements do not apply when fish farm operators (including DNR) are moving fish or fish eggs between their own registered fish farms. However, current DATCP rules continue to prohibit such movement if the operator knows or has reason to know that the fish or fish eggs are affected with a reportable disease such as VHS. DATCP may also issue quarantine and other disease control orders to individual fish farm operators, as necessary.

Disease−Free Certification of Farm−Raised Deer

Certification Period

Under current rules, DATCP may certify a herd of farm−raised deer as brucellosis−free or tuberculosis−free, or both, based on herd test results provided by the herd owner. Participation is voluntary, but disease−free herd certification facilitates the sale and movement of farm−raised deer. Herd certification is generally governed by federal rules (uniform methods and rules) that DATCP has incorporated by reference in its rules.

Under current federal rules, tuberculosis−free herd certification is good for 3 years, while brucellosis−free herd certification is good for only 2 years. USDA proposes to harmonize the certification terms, but has not yet adopted the necessary rule changes. USDA has authorized DATCP to harmonize the terms in Wisconsin by state rule.

This emergency rule extends brucellosis−free herd certification from 2 years to 3 years (a herd owner may request a shorter term), consistent with tuberculosis−free herd certification. That will allow herd owners to conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer.

Testing for Certification

Under current federal rules, 2 whole herd tests are required in order to certify a farm−raised deer herd as a tuberculosis−free herd, while 3 whole herd tests are required in order to certify a farm−raised deer herd as a brucellosis−free herd. USDA proposes to harmonize the testing requirements, but has not yet adopted the necessary rule changes. USDA has authorized DATCP to harmonize the testing requirements in Wisconsin by state rule.

This emergency rule reduces the number of whole herd tests required in order to certify a farm−raised deer herd as a brucellosis−free herd, from 3 whole herd tests to 2 whole herd tests, consistent with the testing requirement for tuberculosis−free herd certification.

Comparison with federal regulations

DATCP administers animal disease control programs in cooperation with USDA. USDA has issued federal orders in response to the discovery of VHS in the United States and Canada. The orders limit interstate and international shipments of VHS−susceptible fish from states and provinces that border the Great Lakes, and require negative VHS testing to permit movement. This rule supplements current federal rules by establishing testing requirements for *intrastate* movement and stocking of wild source fish and fish eggs (including bait species) in Wisconsin.

Comparison with rules in adjacent states

Michigan and Minnesota require VHS testing on salmonids stocked into state waters. On June 7, 2007, Michigan also announced a one−year moratorium on state hatchery production of walleye, northern pike and muskellunge using eggs collected from wild sources in Michigan during 2007. Illinois and Iowa have no VHS testing requirements for intrastate movement or stocking of fish.

Initial Regulatory Flexibility Analysis

Disease Testing of Fish

Effect on private fish farm operators

DATCP estimates that this rule will affect 30−40 private fish farms, not counting DNR "cooperator" fish farms registered by DNR (see above). Many of the affected fish farms are "small businesses," and many of them will be substantially affected by this rule. VHS testing requirements may force some fish farm operators to curtail all or part of their operations. However, some fish farms already conduct VHS tests in order to meet federal requirements for interstate movement of fish.

Fish farm operators may incur added testing requirements under this rule if they keep VHS−susceptible fish or fish eggs that were either (1) collected from any wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs (of *any* species) collected from any wild source within the preceding 12 months. Operators must test those VHS−susceptible fish or fish eggs before they distribute them for bait, for stocking to Wisconsin public waters, or for delivery to other fish farms (other than those registered by the same operator).

A veterinarian or other qualified fish health inspector must certify that the fish or fish eggs are VHS−free, based on tests using approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP has identified on the health certificate form.

VHS tests must be conducted on a statistically representative sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately $500 (actual costs vary depending on test method, number of fish in the lot, number of fish species in the lot, etc.). A single fish farm might need to test from 1−30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and purposes for which the fish are kept and distributed.

DATCP estimates that approximately 30−40 private fish farm operators will need to conduct VHS tests, and that they will conduct those tests on a combined total of approximately 40 lots of fish per year. Assuming an average cost of $500 per test per lot, the *combined total cost to all affected private fish farm operators* will be approximately $20,000 per year. However, some of those affected fish farmers are already performing VHS tests in order to meet federal requirements for shipping fish in interstate commerce, so the net impact of this rule may be less than $20,000. Fish farm costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

Effect on bait dealers

Wisconsin bait dealers are licensed by DNR. This rule will affect licensed bait dealers in the following ways:

- If bait dealers buy VHS−susceptible bait species that originate from wild sources, their purchase costs may reflect the seller's added cost of VHS testing under this rule.
- If bait dealers collect VHS−susceptible bait species from wild sources, they will need to conduct VHS tests before reselling or distributing the bait. They will also need to withhold the bait from distribution for at least 4 weeks pending the completion of VHS tests. That will add costs, and may not be practically feasible for affected bait dealers.

This rule applies only to bait species that are known to be susceptible to VHS. Of the major bait species in Wisconsin (fathead minnow, white sucker, golden shiner and emerald shiner), only one species (emerald shiner) is currently known to be susceptible to VHS. Emerald shiners are obtained exclusively by wild harvesting, while other major bait species can be hatched and raised on farms. At this time, DATCP estimates that emerald shiners represent less than 10% of the overall bait market in Wisconsin (the market for wild−harvested emerald shiners has already diminished as a result of federal VHS testing requirements for emerald shiners moved in interstate commerce).

DATCP estimates that approximately 25 Wisconsin bait dealers are currently harvesting emerald shiners from the wild. DATCP estimates that each of those bait dealers would need to test an average of 6 lots of wild−harvested emerald shiners each year, before distributing the emerald shiners for sale. Assuming an average cost of $500 per test lot, the average annual cost for an individual bait dealer would be about $3,000 per year, and the combined total cost to all 25 of those bait dealers would be about $75,000 per year. That figure does *not* include added costs to hold the emerald shiners for 4 weeks while testing is completed. It is extremely difficult to hold emerald shiners for extended periods, so it may not even be possible for most bait dealers to hold them for the required 4 weeks.

The difficulty of holding emerald shiners for 4 weeks, combined with the added cost of testing emerald shiners, may drive many bait dealers out of the business of harvesting wild emerald shiners for sale as bait. However, those bait dealers may still be able to harvest and sell other types of bait that are not affected by this rule.

Bait dealers that are not currently harvesting emerald shiners will not be substantially affected by this rule unless USDA finds that additional bait species are susceptible to VHS. If USDA finds that other major bait species are susceptible to VHS, this rule could have a more dramatic impact on bait dealers. The impact will depend on the species that are affected.

Accommodation for small business

This rule will have a limited effect on most private fish farms and bait dealers. But in some cases (especially in the case of bait dealers that harvest emerald shiners from wild sources for sale as bait), this rule may impose substantial added costs. If USDA finds that additional fish or bait fish species are susceptible to VHS, this rule may have a more dramatic impact on fish farm operators or bait dealers, or both. Many of the affected entities are small businesses.

This emergency rule is needed to protect the health of wild and farm−raised fish populations in this state. Effective disease control is important for the entire aquaculture industry in this state. Although this rule may increase costs for some fish farm operators and bait dealers, the costs are currently outweighed by the need to prevent and control the spread of disease. DATCP has not exempted small businesses, or adopted more lenient VHS testing requirements for small business, because the risk of disease spread is unrelated to business size.

Disease−Free Certification of Farm−Raised Deer

This rule will have no negative effects on farm−raised deer keepers, and will reduce testing costs for some farm−raised deer keepers. Actual cost savings will depend on herd size and current test schedules. By facilitating simultaneous testing for brucellosis and tuberculosis, this rule will also avoid some stress on tested deer.

Fiscal Estimate

Summary

Disease Testing of Fish

Fiscal effect on DNR

This emergency rule will have a fiscal impact on DNR fish hatchery and stocking operations. Under this rule, all VHS−susceptible fish and fish eggs (including VHS−susceptible bait species) must be tested for VHS before being stocked to Wisconsin public waters if they were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source within the preceding 12 months. This emergency rule provides a limited exemption for fish or fish eggs that are reintroduced to the same waters from which they are collected (see below).

Under current rules, a veterinarian or other qualified fish health inspector must issue a fish health certificate for fish or fish eggs stocked into Wisconsin public waters. The inspector must issue the health certificate on a form prescribed by DATCP. Under this emergency rule, if the fish are of a VHS−susceptible species, and were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish of any species collected from a wild source within the preceding 12 months, the fish health certificate must certify that the fish are VHS−free. The certification must be based on VHS tests conducted according to approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP identifies on the health certificate form.

VHS tests must be conducted on a statistically representative test sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately $500 (actual costs vary depending on test method, number of fish in the lot, number of different species in the lot, etc.). A single fish farm might need to test from 1−30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and the purposes for which the fish are kept and distributed.

DNR annually registers approximately 100 fish farms with DATCP. Thirteen of those fish farms are state−owned fish hatcheries. The remainder are registered by DNR but owned by private DNR "cooperators" (as registrant, DNR assumes legal responsibility for compliance with fish health rules). DATCP estimates that DNR will need to conduct VHS tests on a combined total of approximately 120 lots of fish per year (including fish at state hatcheries and "cooperator" fish farms registered by DNR).

Assuming an average test cost of $500 per lot, the total cost to DNR would be approximately $60,000 per year. However, DNR has already implemented a number of internal controls and VHS testing protocols, so the added cost of this rule will be less than $60,000. DNR costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

Under this emergency rule, fish and fish eggs are exempt from VHS and other fish health testing requirements if they are reintroduced into the same body of water from which they were collected, for the purpose of increasing or rehabilitating a desirable sport fish population. (DATCP and DNR must approve the reintroduction, and a veterinarian or fish health inspector must still issue a fish health certificate based on a visual inspection.) This exemption will make it easier for DNR, local governments and others to continue programs (including so−called "walleye wagon" programs) to

supplement the natural reproduction of important sport fish species.

Fiscal effect on DATCP

DATCP will incur added costs to administer and enforce the fish health testing requirements under this emergency rule (and any subsequent "permanent" rule). DATCP will need *at least* 2.0 FTE additional staff to review and process a large volume of fish health certificates in a timely manner; to train fish health inspectors to collect samples for VHS testing; to provide compliance information and respond to industry inquiries; to conduct inspections and monitor compliance; to conduct investigations of possible law violations; and to initiate enforcement actions if necessary.

The 2.0 FTE staff will have a combined total cost of at least $120,000 per year, including salary, fringe benefits and support costs. DATCP will attempt to absorb these costs in the short term by shifting staff from other important disease control responsibilities, but DATCP will not be able to do so indefinitely without putting other livestock sectors at unacceptable risk. DATCP will seek federal grant funds to cover some of the costs, but federal funding is not guaranteed.

Fiscal effect on University of Wisconsin

This emergency rule may have a slight fiscal impact on University of Wisconsin research facilities and some local governments, to the extent that they may operate fish farms or procure fish from farms affected by this rule. However, the effect will likely be minimal unless those entities are engaged in distributing VHS−susceptible fish or fish eggs from wild sources.

Fiscal effect on local governments

This emergency rule exempts local governments from VHS and other fish health testing requirements when they reintroduce sport fish or fish eggs into the same body of water from which they were collected, for the purpose of increasing or rehabilitating the fish population. (DATCP and DNR must approve the reintroduction, and a veterinarian or fish health inspector must issue a fish health certificate based on a visual inspection.) This exemption will make it easier for local governments to continue current programs (including so−called "walleye wagon" programs) to supplement the natural reproduction of important sport fish species.

Disease−Free Certification of Farm−Raised Deer

This emergency rule extends brucellosis−free herd certification from 2 years to 3 years (a herd owner may request a shorter term), and reduces the required number of certification tests from 3 whole herd tests to 2 whole herd tests, consistent with tuberculosis−free herd certification. That will allow herd owners to conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. The change will have no fiscal impact on DATCP, on other agencies of state government, or on local government.

State fiscal effect

Increase in costs that are not possible to absorb within the agency's budget.

Local government fiscal effect

Increase in costs; permissive.

Types of local governmental units affected

Towns, villages, cities, counties, school districts.

Fund sources affected

GPR, PRO

Affected Ch. 20 appropriations

Section 20.115 (2) (a) and (ha), Stats.

Notice of Hearing
Agriculture, Trade and Consumer Protection
CR 08−067

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

Hearing Information

Tuesday, **August 26, 2008**
At 1:00 p.m.
Dept. of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive, Board Room (CR−106)
Madison, Wisconsin, 53718−6777

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by Monday, August 18, 2008, by writing to Michelle Reinen, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708−8911, telephone (608) 224−5160. Alternatively, you may contact the DATCP TDD at (608) 224−5058. Handicap access is available at the hearings.

Submission of Written Comments

DATCP will hold a public hearing at the time and place shown above. DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until Friday, September 12, 2008 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to michelle.reinen@wi.gov or online at https://apps4.dhfs.state.wi.us/admrules/public/Home

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

Copies of Proposed Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224−5160 or emailing michelle.reinen@wi.gov. Copies will also be available at the hearings. To view the proposed rule online, go to:

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

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

2007 Wisconsin Act 42 regulates providers of subscription video services. Among other things, the act regulates customer access to video services, and prohibits discrimination in the provision of video services based on race or income. This rule interprets and clarifies those regulations.

Statutes interpreted

Section 66.0420 (8), Stats.

Statutory authority

Sections 66.0420 (13) (a) and 93.07 (1), Stats.

Explanation of statutory authority

2007 Wisconsin Act 42 eliminates municipal franchising of cable television services and creates a new state system for franchising and regulating "video service providers" (including but not limited to cable television service providers). The act regulates subscription video services provided, under a state franchise, via cable or local telephone lines. Among other things, the act does all of the following (see s. 66.0420 (8), Stats.):

- Prohibits a state−franchised video service provider from denying access to a "group" of potential customers based on race or income. A provider has a defense against a claim of discrimination based on income if, within 3 years after the provider first offered video services, at least 30% of the households with access to the provider's video service are "low−income households." The Department of Agriculture, Trade and Consumer Protection ("DATCP") may extend the applicable time period, at the request of a video service provider.
- Requires a state−franchised "large telecommunications video service provider" to do all of the following, unless DATCP grants a waiver or extension:
  - Provide video service access to at least 35 percent of the households in each of the provider's basic local exchange service areas within the state franchise area no later than 3 years after the provider first offers video service.
  - Provide video service access to at least 50 percent of the households within each basic local exchange service area not more than 5 years after the provider first offers video service in that area, or not more than 2 years after at least 30 percent of the households with access have subscribed for at least 6 consecutive months, whichever occurs later.
- Requires a state−franchised "large telecommunications service provider" to file an annual report with DATCP regarding the provider's progress in complying with minimum access requirements.
- Allows a video service provider to satisfy access requirements with an alternative technology (other than satellite service) that offers the same basic service, function and content features offered by the provider's normal video service network.
- Provides that a telecommunications video service provider is not required to provide video service outside its basic local exchange service area.
- Provides that an incumbent cable service provider is not required to provide video service outside the area in which it provided cable television service when it first received a state franchise.

Wis. Act 42, as passed by the Legislature, gave DATCP very limited authority to adopt rules interpreting the access and anti−discrimination provisions of the new video services law. The Governor's partial veto effectively expanded DATCP's rulemaking authority to interpret those provisions. In his veto message, the Governor stated: "It is imperative that the state agencies responsible for …enforcing the anti−discrimination provisions have the ability to interpret these statutes through administrative rule."

Rule content

This rule incorporates and clarifies certain video service access and anti−discrimination provisions contained in Act 42. This rule does all of the following:

- Clarifies that a "group" means 2 or more households. A video service provider denies access to a "group" if it denies access to all of the households comprising that "group."
- Defines "household" consistent with current statutes.
- Defines "low−income household" as a household with a combined annual income equal to less than 200% of the federal poverty level for a family of 3.
- Clarifies that a video service provider provides video service "access" to a household if the provider is able to provide video service to that household using the provider's normal service network or an equivalent alternative technology, regardless of whether any customer has ordered the service.
- Spells out the procedure by which a video service provider may ask DATCP to waive or extend the deadline for complying with a minimum access requirement:
  - A provider must submit a request in writing, in hard−copy and electronic form. The request must justify the proposed waiver or extension, based on statutory criteria, and must include facts and evidence supporting the justification. DATCP may request relevant supplementary information.
  - Within 30 business days after DATCP receives a written request, it must issue a proposed order granting the request, denying the request, or granting the request in modified form. DATCP must issue a press release announcing the proposed order and inviting public comment. DATCP may hold one or more public hearings on the proposed order.
  - Within 60 business days after DATCP issues a proposed order, DATCP must issue a final order. If the final order differs from the proposed order, DATCP must explain the reasons for difference.
- Clarifies that a "large telecommunications service provider" must file its required annual progress report with DATCP by January 31 of each calendar year, beginning with the first calendar year after the provider first provides video service under a state franchise. The provider must provide annual progress reports for at least 5 years, unless DATCP makes an earlier written determination that the provider has met applicable minimum access requirements.

In a separate rule−making proceeding (*Clearinghouse Rule No. 08−027*), DATCP has proposed a definition of "video service" that would also apply to this rule. That definition is identical to the definition in s. 66.0420 (1) (y), Stats.

Comparison with federal regulations

Federal law regulates cable television service, including cable ownership, use of cable channels, and cable franchising. Federal law also regulates video services provided by telephone companies.

State and local governments may regulate video services, as long as the regulations do not conflict with federal law. Federal law imposes consumer protection and customer service obligations on cable television service providers, but does not prevent states from imposing more stringent requirements.

Federal law does not establish minimum access requirements. Federal law does prohibit discrimination against a "group" of customers based the income of residents of the "local area" in which the "group" resides. Federal law does not define "group" or "local area."

Comparison with rules in adjacent states

During 2007, Illinois, Michigan and Iowa enacted laws that create a new state system for franchising and regulating video service providers. Minnesota has yet to adopt such a law. The laws adopted by Illinois, Michigan and Iowa are similar in relevant respects to the Wisconsin law, but are not identical to the Wisconsin law.

Illinois. The Illinois law does the following:

- Prohibits a video service provider from denying access to any potential residential providers because of race or income of the residents in the local area in which the potential subscribers reside; and does *not* provide the video service provider with an affirmative defense to an allegation of discrimination.
- Requires a large video service provider to provide access to 25% of the households in its telecommunication service area within 3 years after it began providing video service, and 35% within 5 years after it began providing video service. The provider is not required to meet the 35% requirement until 2 years after at least 15% of the households with access to the provider's video service subscribe to the service for at least 6 months.
- Requires, within 3 years after the video service provider is granted a franchise, that 30% of the households with access to the video service shall be low−income.
- Requires the video service provider to file with the state an annual report describing factors related to the access requirements.
- Allows the video service provider to assert as a defense to a violation of the access requirements a need for an extension of the time requirements based on stated factors.
- Defines "low−income household" as those residential households within the video service provider's existing local exchange area where the average annual household income is less than $35,000 based on United States Census Bureau estimates adjusted annually.
- Defines "access" to mean that the video service provider is capable of providing broadband Internet capability and video programming at the household address using any technology except satellite television regardless of whether any customer has ordered the service.

Michigan. The Michigan law does the following:

- Prohibits a video service provider from denying access to service to any group of potential residential subscribers because of the race or income of the residents in the local area in which the group resides.
- Provides the video service provider with a defense to an allegation of discrimination where it can show either of the following:
  - Within 3 years after it began providing video service at least 25% of the households with access to the provider's video service are low−income households.
  - Within 5 years after it began providing video service and from that point forward at least 30% of the households with access to the provider's video service are low−income households.
- Requires a large video service provider to provide access to 25% of households in its telecommunication service area within 3 years after it began providing video service, and 50% within 6 years after it began providing video service. The provider is not required to meet the 50% requirement until 2 years after at least 30% of the households with access to the provider's video service subscribe to the service for at least 6 months.
- Allows the video service provider to apply for a waiver or extension of time of the access requirements based on stated factors.
- Requires the video service provider to submit to the Michigan pubic service commission any information necessary for the commission to prepare an annual report.
- Defines "low−income household" as a household with an average annual household income of less than $35,000.00 as determined by the most recent decennial census.
- Does *not* define "access."

Iowa. The Iowa law does the following:

- Prohibits a video service provider from denying access to any group of potential residential providers because of the income of the residents in the local area in which the potential subscribers reside. This law does *not* prohibit denying access based on race, and does *not* provide the video service provider with an affirmative defense to an allegation that it violated this law.
- Requires a large video service provider to extend its system to a potential subscriber located within its authorized service area if all of the following occur:
  - At least 250 dwelling units are located within 2,500 feet of a remote terminal.
  - The dwelling units do not have cable service or video service available from another provider.
  - The video service provider is providing cable service and video service to over 50% of all cable service or video service subscribers in the potential subscribers franchise area.
- Does *not* specify any reporting requirements for the video service providers.

Summary of factual data and analytical methodologies

This rule does not depend on any complex analysis of data. The definition of "low−income household" is based on the official poverty line defined by the federal Office of Management and Budget based on the most recent data available from the United States Bureau of the Census. The definition of "access" is based on industry practices and consumer experience.

Initial Regulatory Flexibility Analysis

2007 Act 42 will have a major impact on video service providers in Wisconsin.

This rule interprets and clarifies portions of Act 42 related to customer access to video services, and discrimination in providing access. This rule does not add any substantive requirements or prohibitions, beyond what is already contained in Act 42.

None of the video service providers affected by Act 42 or this rule are small businesses, so this rule will have no impact on small business. For the most part, this rule will have a positive impact on video service providers, because it will clarify requirements and procedures under Act 42.

Fiscal Estimate

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

Notice of Hearing

Financial Institutions—Securities

NOTICE IS HEREBY GIVEN that pursuant to the general rule−making authority provided in sections 551.63 (1) and (2) of the current Wisconsin Securities Law, as well as the statutory authority sections listed below for the Securities Law−related changes based on 2007 Wisconsin Act 196, together with the statutory rule−making authority under current ss. 553.58 (1) and 553.27 (4) of the Wisconsin Franchise Law, the Division of Securities of the Department of Financial Institutions will hold a public hearing to consider a comprehensive adoption, amendment and repeal of administrative rules of the Division of Securities relating to the operation of Chapter 551, Wis. Stats., the Wisconsin Uniform Securities Law as repealed and recreated based on 2007 Wisconsin Act 196, together with revisions to several rules under the Wisconsin Franchise Investment Law, Chapter 553, Wis. Stats.

Hearing Information

August 20, 2008	345 West Washington Avenue
Wednesday	4th Floor Conference Room
at 10:00 a.m.	Madison

Submission of Written Comments

Written comments in lieu of public hearing testimony may be submitted which must be received no later than the hearing date and should be addressed to the Administrator of the Division of Securities, 345 West Washington Avenue, PO Box 1768, Madison Wisconsin, 53701.

Copies of Proposed Rule and Contact Person

A copy of the full text of the proposed rule revisions and fiscal estimate may be obtained from:

Randall E. Schumann (608) 266−3414
Legal Counsel for the Division of Securities
Department of Financial Institutions
345 West Washington Avenue, 4th Floor
P. O. Box 1768
Madison, WI 53701

Additionally, the full text of the proposed rule revisions is available on−line at the DFI Website: www.wdfi.org/securities&franchising.

Analysis Prepared by Dept. of Financial Institutions—Securities

Statutory authority

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

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

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

Sections 553.58 (1), 553.26, 553.31 (1), and 553.27 (4), Wis. Stats.

Statutes interpreted

Securities Law−related:

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

Franchise Law−related:

Sections 553.26, 553.31 (1), and 553.27 (4), Wis. Stats.

Summary of rule

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

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

Additionally, the Wisconsin Franchise Law disclosure document−related rules impacted by the changes to the FTC Franchise Rule need to be revised and updated as necessary to be made consistent and thereby facilitate compliance by franchisors seeking to offer and sell franchises to persons in Wisconsin. For purposes of providing regulatory consistency

among the 15 state jurisdictions (including Wisconsin) that regulate offers/sales of franchises, the Franchise and Business Opportunity Project Group of the North American Securities Administrators Association ("NASAA") developed revised 2008 Franchise Registration and Disclosure Guidelines ("Franchise Guidelines") that were adopted by the NASAA membership in April 2008, that state jurisdictions which register franchise offerings can adopt as the required format for franchise disclosure documents. Those Franchise Guidelines were developed to be, and are, consistent with the FTC Franchise Rule which allows franchise law states to impose additional disclosure requirements that are consistent with the FTC Franchise Rule. In that regard, the Franchise Guidelines adopt the FTC form of franchise disclosure document with the addition of a state cover page, and include new instructions for franchisors to file registrations with state administrators, as well as revised application forms. The proposed Wisconsin Franchise Rule revisions will include, via incorporation by reference, the above−described NASAA Franchise Guidelines and forms.

A summary of the subject matter and nature of the more significant of the rule revisions follows:

1. In the definitional Chapter of the Securities rules, rules DFI−Sec 1.02 (6) (a) and (b), which define the term "investment contract" to include both the "modified Howey" and "risk capital" tests, are being repealed because both are expressly included [as subsections (d) 1 and 2] in the statutory definition of "security" in new s. 551.102 (28), Wis. Stats.

2. The additional categories of "institutional investor" contained in the registration exemption rule of DFI−Sec 2.02 (4) under current s. 551.23 (8), Wis. Stats., are moved to the Definitions Chapter of the rules because under the new statute, "institutional investor" is now a defined term contained in definitional section s. 551.102 (11), Wis. Stats., par. (b) of which provides separate authority to, by rule, further specify other persons as "institutional investors."

3. The registration exemption treatment for both domestic (Wisconsin) as well as non−Wisconsin not−for−profit−issuers that is currently scattered in several different places in both the statutes and rules, is consolidated in 4 distinct subsections of a single exempt security rule adopted under the statutory authority of new s. 551.201 (7), Wis. Stats.

4. Because the federal Regulation D, Rule 505 securities registration exemption contained in current s. 551.23 (19), Wis. Stats., was not retained in the new law, but rather was to be adopted by rule, that federal Rule 505 exemption is made an exempt transaction rule under the discretionary exemption rule−making authority of s. 551.203, Wis. Stats.

5. Designating by rule for purposes of the "manual" registration exemption in new statute section 551.202 (2) (d), Wis. Stats., certain nationally recognized securities manuals.

6. Among the broker−dealer−related rule revisions, the temporary agent licensing rule in DFI−Sec 4.085 is repealed because that procedure is included in new statute 551.408 (2), Wis. Stats.

7. The extensive series of bank agency transactions rules in current s. DFI−Sec 4.10 are repealed as being superseded by the language of the exclusion from the definition of broker−dealer in s. 551.102 (4) (c) of the new law [based on federal Graham−Leach−Bliley legislation] relating to permitted securities−related activities of banks.

8. The extensive series of rules in DFI−Sec 4.11 dealing with brokered certificates of deposit (i.e. sales to persons in Wisconsin by broker−dealers of federally insured certificates of deposit in specified financial institutions) are also repealed.

9. Included among the investment adviser−related rule revisions are additional "dishonest or unethical practices" under existing rule DFI−Sec 5.06 based on current NASAA Model Rules (such as guaranteeing results, offering "free" reports or analyses that really are not free, or disclosing clients' identity or financial information) which, under new s. 551.412 (4) (m), Stats., can be a basis for denial, suspension or revocation of an investment adviser registration. Also added are currently proposed NASAA Model Rules on subject areas that include principal trading by an adviser, making misrepresentations or omissions of material facts in soliciting advisory customers, and effectuating certain prohibited agency cross−transactions.

10. Revisions to existing advisory rules would raise (up to $1200 from the current $500) the dollar threshold of permitted prepayment of adviser fees six months or more in advance to thereby harmonize with a pending SEC proposal on that subject.

11. The examination waiver provided for investment advisers and investment adviser representatives in current DFI−Sec 5.01(4) (a) based upon passage of the Series 7 and Series 63 examination is repealed to make Wisconsin uniform with other state jurisdictions −− virtually none of which recognize such exams as a basis for waiver of the investment adviser examination requirement.

12. The "temporary hardship exemption" from compliance with the electronic−filing−with−the IARD requirement currently contained in DFI−Sec 5.01(8) is being repealed because in the seven years since the SEC and states (including Wisconsin) have adopted that exemption,, the Division's information is that it has never been used or relied on at the federal or state level.

13. Added to the Administrative Procedure Chapter are 2 separate rules relating to ability of parties to conduct discovery and to utilize information acquired subsequent to issuance of a summary order.

14. Revisions to the Franchise Law rules include (i) changing the rule defining "timely" in DFI−Sec 31.01 (8) [with respect to providing required disclosures] from the previous 10 business day requirement to the new 14 calendar day requirement under the new FTC Franchise Rule and as established in amended s. 553.27 (4), Wis. Stats., in 2007 Wisconsin Act 150; and (ii) amendments to the franchise registration and registration amendment filing procedures in DFI−Sec 32.06 and 32.07 to reference the new FTC Franchise Rule and its Disclosure Document requirement, as well as the recently developed and adopted conforming NASAA 2008 Franchise Registration Disclosure Guidelines.

Each Section that contains a substantive adoption, amendment or repeal of a rule is followed by a separate Analysis which discusses the nature of the revision as well as the reason for it.

A copy of the entirety of the proposed rule revisions to be considered may be obtained upon request to the Division of Securities, Department of Financial Institutions, 345 West Washington Avenue, 4th Floor, P.O. Box 1768, Madison, Wisconsin 53701. Additionally, the full text of the proposed rule revisions is available on−line at the DFI Website: www.wdfi.org/securities&franchising.

Initial Regulatory Flexibility Analysis

Types of small businesses that could be affected

Broker−dealer and investment adviser registrants under the new Wisconsin Uniform Securities Law with fewer than 25 full−time employees who meet the other criteria of sec. 227.114 (l) (a), Wis. Stats. The proposed revisions to both the

procedural and substantive securities broker−dealer and investment adviser registration rules, as well as the Rule of Conduct and Dishonest or Unethical Practices provisions are applicable equally to all broker−dealers and investment advisers because the requirements involved are for the protection and benefit of Wisconsin customers of those firms. All Wisconsin customers of securities broker−dealers and investment advisers are entitled to the public investor protection benefits of such rule requirements, irrespective of the size of the firm providing the securities services.

All of the small−business capital formation registration exemptions under the current Wisconsin Securities Law rules are retained in the rules as revised.

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

No new or additional reporting, bookkeeping, or other procedures are contained in this rulemaking package.

Fiscal Estimate

Summary

No one−time revenue fluctuations.

State ***fiscal effect***

None

Local fiscal effect

None

*L****ong−range fiscal implications***

None

Notice of Hearing
Public Service Commission
CR 08−070

NOTICE IS GIVEN that pursuant to s. 227.16 (1), Stats., the Commission will hold a public hearing on proposed rule changes to repeal and recreate Chapter PSC 116, relating to a fuel cost rate adjustment process for electric utility service.

Hearing Information

August 4, 2008	Amnicon Falls Hearing Room
Monday	Public Service Commission Bldg.
9:30 a.m.	610 North Whitney Way
	Madison, Wisconsin,

This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact James Wagner or Michael Ritsema, as indicated below.

Contact Person

Questions regarding this matter should be directed to James Wagner, Docket Coordinator, (608) 267−9768, James.Wagner@psc.stat.wi.us; or Michael Ritsema, (608) 267−9296, Michael.Ritsema@psc.state.wi.us. Media questions should be directed to Tim Le Monds, Director of Governmental and Public Affairs at (608) 266−9600. Hearing or speech−impaired individuals may also use the Commission's TTY number; if calling from Wisconsin use (800) 251−8345, if calling from outside Wisconsin use (608) 267−1479.

Copy of Proposed Rule

A copy of this entire notice, including the text of the proposed rule, may be accessed from the electronic regulatory filing portion of the Commission's website (psc.wi.gov).

Submission of Written Comments

Any person may submit written comments on these proposed rules. The hearing record will remain open for written comments from the public until Wednesday, August 6, 2008. All written comments must include a reference on the filing to docket 1−AC−224. File by one mode only.

Industry:

File comments using the Electronic Regulatory Filing system. This may be accessed from the Commission's website psc.wi.gov.

Members of the Public:

If filing electronically: Use the Public Comments system or the Electronic Regulatory Filing system. Both of these may be accessed from the Commission's website psc.wi.gov.

If filing by mail, courier, or hand delivery: Address your comments as shown below.

If filing by fax: Send fax comments to (608) 266−3957. Fax filing cover sheet must state "Official Filing," the docket number 1−AC−224, and the number of pages (limited to 25 pages for fax comments).

Address comments to:

Sandra J. Paske
Secretary to the Commission
Public Service Commission
P.O. Box 7854
Madison, WI 53707−7854
FAX (608) 266−3957

The deadlines for receiving comments are:

Comments Due: Wednesday, August 6, 2008 − Noon
FAX Due: Tuesday, August 5, 2008 − Noon

At the hearing or in written comments, persons are encouraged to address the following:

1. Please quantify the risk associated with the current chapter PSC 116 and the risk associated with the proposed chapter PSC 116.

2. Please describe how the proposed rule achieves or undermines the four goals of these rules as set by the Commission:

- Insulate electric utilities from the high−risk created by volatile fuel costs.
- Create incentives for good fuel management practices.
- Promote rate stability.
- Minimize the administrative burden to the Commission.

Analysis Prepared by the Public Service Commission

Statutory authority

Sections 196.02 (1) and (3), 196.03 (1), 196.06, 196.20, 196.37, 196.395, and 227.11, Stats.

Statute interpreted

Section 196.20 (4), Stats.

Explanation of agency authority

The Commission may promulgate a rule with respect to a fuel cost rate adjustment process for electric utility service under ss. 196.02 (1) and (3), 196.03 (1), 196.06, 196.20, 196.37, 196.395, and 227.11, Stats. For general rulemaking authority, statutes grant the Commission, "the jurisdiction to supervise and regulate every public utility in this state and to

do all things necessary and convenient to its jurisdiction." s. 196.02 (1), Stats. This includes the power to, "adopt reasonable rules to govern its proceedings and to regulate the mode and manner of all inspections, tests, audits, investigations and hearings." s. 196.02 (3), Stats. Also the Commission "may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute. s. 227.11 (2) (a), Stats.

Chapter 196, Stats., confers upon the Commission exclusive authority to establish just and reasonable rates for public utility service. *Waukesha Gas & Electric Co. v. Railroad Commission of Wisconsin*, 181 Wis. 281, 287, 194 N.W. 846 (1923). The Commission enforces a utility's duty to "furnish reasonably adequate service and facilities" at just and reasonable rates. s. 196.03 (1), Stats. A utility may only increase its rates, "by order of the commission, after an investigation and opportunity for hearing." s. 196.20 (2m), Stats. If the Commission, "finds rates, . . . to be unjust, unreasonable, insufficient . . . or unlawful, the commission shall determine and order reasonable rates . . . to be imposed, observed and followed in the future." s. 196.37 (1), Stats.

In addition to the Commission's broad ratemaking powers, s. 196.20 (4) (c), Stats., states, "[i]f an increase in fuel costs is of an extraordinary or emergency nature, the commission, after a hearing limited in scope to the question of the increase in fuel costs, may grant a rate increase to an electric public utility." s. 196.20 (4) (c), Stats. This subsection diminishes none of the Commission's other powers to investigate and change rates. Therefore with respect to a fuel cost rate adjustment process for electric utility service the Commission has discretion to establish any necessary and convenient process that must include a hearing before rates may increase.

Related statutes or rules

Section 196.20 (4) (a) 2., Stats., relates to the proposed rule because under s. PSC 116.01 (12), "utility" means an "electric public utility" as defined in s. 196.20 (4) (a) 2., Stats. Section 196.192 (2) (a), Stats., related to the proposed rule because under s. PSC 116.02 (1) (d), a payment made in conjunction with retail customer tariffs under s. 196.192 (2) (a), Stats., for voluntary curtailable load is an item that contributes to fuel cost.

Chapter PSC 117 relates to the proposed rule because "opportunity sale," as defined under s. PSC 117.03 (14), is included in the calculation of "energy market sale" under s. PSC 116.02 (1) (c). Also "planning reserve margin," as defined under s. PSC 117.03 (16), is included in the calculation of "energy market purchase" under s. PSC 116.02 (2) (a).

Objective of the rule

The Commission sets the rates a Wisconsin electric public utility may charge customers. During periodic rate case proceedings the Commission finds reasonable forecasts of the utility's revenues and costs and establishes rates designed to give a utility the opportunity to recover its costs plus a reasonable rate of return on equity. Except for the cost of fuel used to generate electricity, significant differences between forecasted and actual costs rarely occur. Significant discrepancies between the predicted and actual fuel cost occur because of the volatile nature of this cost. These shifts in fuel cost may cause rates to become unjust and unreasonable, requiring a rate change.

As early as the 1920s many state utility commissions, including Wisconsin's, allowed a utility to place in its tariff a formula under which rates adjusted automatically according to changes in fuel cost. More than 25 years ago the Wisconsin Legislature prohibited large investor−owned electric utilities from using this automatic adjustment clause by enacting s. 196.20 (4), Stats. Intended to add public scrutiny to the process while recognizing the need for a quick response, this section authorized the Commission to order a rate increase caused by "an increase in fuel costs . . . of an extraordinary or emergency nature, . . . after a hearing limited in scope to the question of the increase in fuel costs." s. 196.20 (4) (c), Stats.

Chapter PSC 116 implements s. 196.20 (4), Stats. Originally promulgated in 1985, the current rule reflects an update in 2002 designed to streamline the fuel cost rate adjustment process and reduce the number of such proceedings. However, once promulgated the rule update met with changed circumstances its design did not address. These circumstances included the following factors that further increase fuel cost volatility: (1) the implementation of Midwest Independent Transmission System Operator?Day 2 Market, (2) increased demand on some fuels, increased transportation costs of some fuels, and (3) the effects of severe weather on the availability of some fuels. This increased volatility has significantly augmented a utility's risk of an unreasonable loss when costs go up and a customer's risk of paying unreasonable rates when costs go down. This situation prompted the Commission to seek a redesign of the fuel cost rate adjustment process that resulted in this Proposed Rule.

Summary of proposed rule

The proposed rule establishes a process by which the rates for the state's large investor−owned electric utilities may be changed to reflect changes in the cost of fuel. The process requires a utility to submit to the Commission an annual fuel cost plan that forecasts, for a one year period, the cost of specified fuel items. These fuel costs include the cost of materials that are converted to electrical energy, as well as items and programs that offset the cost of, or provide less expensive alternatives to, those materials. The Commission reviews each utility's fuel cost plan, and, after a hearing, establishes rates that recognize the cost in the plan.

During the course of the year to which the plan applies, the rule allows a utility to defer discrepancies between the fuel cost forecasted in rates and the actual cost. The rule provides for the Commission to reconcile the difference between the forecasted and the actual, reasonable and prudently incurred fuel cost on an annual basis. After a hearing, the Commission approves a reasonable adjustment to rates to implement this reconciliation. Also during a plan year, the Commission may adjust rates to avoid a reconciliation that causes a material change in rates. However, no utility may obtain a mid−year increase in rates under this provision more than once during a plan year.

Comparison with federal regulations

No comparable federal regulations exist. The proposed rule does not conflict with, overlap, or duplicate other rules or federal regulations.

Comparison with rules in adjacent states

Illinois, Iowa, and Minnesota allow rate regulated utilities to adjust rates based on a formula specified in that state's administrative code and published on the utility's approved tariff. Rates adjusted in this manner do not require a Commission order or hearing. As part of electric restructuring in Illinois, the largest electricity providers opted out of this method of cost recovery.

Michigan allows a utility to escrow discrepancies between the fuel cost forecasted in rates and the actual cost. The Michigan Public Service Commission reconciles the difference between the forecasted and the actual fuel cost on

an annual basis and, after a hearing, approves an adjustment to rates to implement this reconciliation. The proposed rule is modeled after the Michigan process.

Initial Regulatory Flexibility Analysis

The rule will have no effect on small business.

Fiscal Estimate

Summary

The proposed rule changes the fuel cost rate adjustment process for electric public utilities. There are no additional costs to state or local government as a result of these changes and there is also no significant financial impact on the private sector.

State fiscal effect

None

Local fiscal effect

None

Fund sources affected

PRO

Affected Ch. 20 appropriations

Section 20.155 (1) (g), Stats.

Long−range fiscal implications

None

Notice of Hearing
Workforce Development
Family Supports, Chs. DWD 12−59
EmR0821 − CR 08−066

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.22 (9) and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider emergency and permanent rules revising Chapter DWD 40, relating to the establishment of birth cost orders based on child support guidelines.

Hearing Information

July 29, 2008	MADISON
Tuesday	G.E.F. 1 Building, B205
1:30 p.m.	201 E. Washington Avenue

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 wheelchair accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at 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 audio 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
Department of Children and Families
201 E. Washington Avenue
Madison, WI 53707
(608) 267−9403 or elaine.pridgen@wisconsin.gov

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 July 30, 2008, will be given the same consideration as testimony presented at the hearing.

Agency Contact Person

Attorney Connie Chesnik, Office of Legal Counsel, Department of Children and Families, (608) 267−7295, connie.chesnik@wisconsin.gov.

Analysis Prepared by the Department of Workforce Development

Statutory authority

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

Statutes interpreted

Section 767.89 (3) (e), Stats.

Related statutes or rules

45 CFR 302.33, 302.56, 303.31, 303.72(a)

Explanation of agency authority

As of the date of filing, authority to promulgate this rule is within the Department of Workforce Development. Effective July 1, 2008, authority to promulgate the rule and contact individuals will be within the Department of Children and Families.

Section 49.22 (9), Stats., provides that the department shall promulgate rules that provide a standard for courts to use in determining a child support obligation based upon a percentage of the gross income and assets of either or both parents. According to the federal Office of Child Support Enforcement (OCSE), medical support is a subset of child support.

Summary of the emergency and proposed rules

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.

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 it 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. OCSE'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 father's ability to pay.

This rule creates a procedure in the child support guidelines in Chapter DWD 40 that allows a court to take into consideration the father's ability to pay in determining the birth cost judgment amount. The court may order a judgment that is the lowest 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 father's income over 36 months.
- If a father's child support obligation was determined under s. DWD 40.04 (4) and the father's monthly income available for child support is between 75% and 125% of the federal poverty guidelines, the court may use the maximum birth cost judgment amount provided in the schedule in Appendix D.
- If a father's child support obligation was determined under s. DWD 40.04 (4) and the father's monthly income available for child support is less than 75% of the federal poverty guidelines, the court may order a birth cost judgment at an amount appropriate for the father'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 birth cost provision 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 department will revise the schedule of the maximum birth cost judgment amounts for low−income payers in Appendix D every year based on changes in the federal poverty guidelines and publish notice of the revisions to the schedule in the *Wisconsin Administrative Register.* Currently the schedule in Appendix C on determining the child support obligation of low−income payers is revised at least once every 4 years based on changes in the federal poverty guidelines since the schedule was last revised. The proposed rule will provide that both Appendix C and Appendix D will be revised every year based on changes in the federal poverty guidelines.

The proposed rule will also create a cross−reference to the medical support provision in s. 767.513, Stats., in the newly−created section on medical support in s. DWD 40.05. OCSE has notified Wisconsin that the medical support provision in s. 767.513, Stats., must be within the child support guidelines in Chapter DWD 40.

In addition, the proposed rule amends the section on determining income imputed based on earning capacity when information on the parent's actual income or ability to earn is unavailable. The current rule provides that the court may impute to the parent the income that a person would earn by working 35 hours per week for the federal minimum wage. This provision was created effective January 1, 2004, when the federal and state minimum wage were the same rate.

The state minimum wage has been higher than the federal minimum wage since June 1, 2005, and the provision on imputing income when information is unavailable has been inconsistently applied by counties since the increase. Some counties have been using the state minimum wage in determining earning capacity since it is the applicable minimum wage rate, while others have been using the federal minimum wage as the current rule provides.

The proposed rule will allow courts to impute income to the parent at the higher of the state or federal minimum wage. This change will have no effect in the near future since the federal minimum wage will soon be equal to or higher than the state minimum wage, but it will ensure consistency among counties if the state rate is again higher than the federal rate. Effective 7/24/08, the federal minimum wage rate will be $6.55 and the state minimum wage rate will be $6.50. Effective 7/24/09, the federal minimum wage rate will be $7.25, and the state minimum wage is proposed to also increase to $7.25.

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.

Comparison with rules in adjacent states

All states are required to comply with the OCSE interpretation that birth cost judgment amounts must be set under the state's child support guidelines.

Summary of factual data and analytical methodologies

OCSE has notified states that birth cost judgment amounts must be set according to child support guidelines that take into consideration the father's ability to pay.

This rule provides that the amount of a birth cost judgment may not exceed 5% of the father's income over 3 years, with a graduated scale of lower amounts for fathers with income below 125% of the federal poverty guidelines. The 5% limit is based on a proposed federal rule on medical support in child support cases. The proposed federal rule provides that cash medical support or private health insurance is considered reasonable in cost to the obligated parent if it does not exceed 5% of his or her gross income. *Child Support Enforcement Program; Medical Support*, 71 Fed. Reg. 549965, (proposed September 20, 2006)

Analysis used to determine effect on small businesses

The rule could affect a private insurance company seeking recovery of birth costs under s. 767.89 (3) (e), Stats., but the effect would be *de minimus*.

Initial Regulatory Flexibility Analysis

The rule may affect small businesses but will not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

Summary

The rule allows Wisconsin to continue to collect birth cost judgments owed to the state through federal income tax refund offset. If the department failed to enact this rule to comply with OCSE requirements, the state and county child support agencies would likely experience a decrease in revenue. In calendar year 2007, the child support program collected $11,481,000 in birth costs through federal income tax refund offset. Of the nearly $11.5 million collected, approximately $6.62 million was returned to the federal government to reimburse Medicaid costs, $1.72 million was used by county child support agency programs to benefit children in the state, and the remaining $3.14 million was returned to the state Medicaid program.

State fiscal effect

None

Local fiscal effect

None

Long−range fiscal implications

Continuation of current revenue.

Notice of Hearing

Workforce Development

Family Supports, Chs. DWD 12−59

CR 08−068

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.138 and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules revising Chapter DWD 16, relating to emergency assistance for families with needy children.

Hearing Information

August 5, 2008	MADISON
Tuesday	G.E.F. 1 Building, B205
1:30 p.m.	201 E. Washington Avenue

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 wheelchair accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at 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 audio 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
Department of Children and Families
201 E. Washington Avenue
Madison, WI 53707
(608) 267−9403 or elaine.pridgen@wisconsin.gov

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 August 6, 2008, will be given the same consideration as testimony presented at the hearing.

Agency Contact Person

Jude Morse, Bureau of Working Families, Department of Children and Families; jude.morse@wisconsin.gov, (608) 266−2784.

Analysis Prepared by the Department of Workforce Development

Statutory authority

Sections 49.138 and 227.11 (2) (a), Stats.

Statutes interpreted

Section 49.138, Stats.

Explanation of agency authority

As of the date of filing, authority to promulgate this rule is within the Department of Workforce Development. Effective July 1, 2008, authority to promulgate the rule and contact individuals will be within the Department of Children and Families.

Section 49.138, Stats., provides that the department shall implement a program of emergency assistance to needy persons in cases of fire, flood, natural disaster, homelessness or impending homelessness, or energy crisis. "Needy person" has the meaning specified by the department by rule.

Summary of the proposed rule

The emergency assistance program is funded by the federal Temporary Assistance for Needy Families (TANF) block grant, which requires that the funds be used for eligible needy families with a child. The proposed rule will add a provision to the nonfinancial eligibility section regarding the child for whom emergency assistance is requested. The current rule provides that the child is or, within 6 months prior to the month of application, was living with a qualified caretaker relative. The proposed rule also requires that the child will live with the qualified caretaker relative in the month following the application date.

Comparison with federal regulations

In general, states must use TANF funds for eligible, needy families with a child and for one of the four purposes of the TANF program:

1. To provide assistance to needy families.
2. To end dependence of needy parents by promoting job preparation, work, and marriage.
3. To prevent and reduce out−of−wedlock pregnancies.
4. To encourage the formation and maintenance of two−parent families.

Comparison with rules in adjacent states

All states with an Emergency Assistance program funded by TANF must require that the assistance be used for an eligible family with a child.

Summary of factual data and analytical methodologies

The rule ensures compliance with TANF requirements.

Analysis used to determine effect on small businesses

The rule affects W−2 agencies but the change in policy is minor.

Initial Regulatory Flexibility Analysis

The rule may affect small businesses but will not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

Summary

The policy change is so minor that it is not expected to have any fiscal effect.

State fiscal effect

None

Local fiscal effect

None

Long−range fiscal implications

None

Notice of Hearing

Workforce Development

Labor Standards, Chs. DWD 270−279

CR 08−069

NOTICE IS HEREBY GIVEN that pursuant to ss. 104.04 and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules revising Chapter DWD 272, relating to increasing Wisconsin's minimum wages and affecting small businesses.

Hearing Information

August 6, 2008	MADISON
Wednesday	G.E.F. 1 Building, H306
1:30 p.m.	201 E. Washington Avenue

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 wheelchair accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 266−9427 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Copies of Proposed Rule

A copy of the proposed 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:

Bob Anderson
Department of Workforce Development
Equal Rights Division
201 E. Washington Avenue
P.O. Box 8928
Madison, WI 53708−8928
bob.anderson@dwd.state.wi.us or (608) 266−3345

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 August 7, 2008, will be given the same consideration as testimony presented at the hearing.

Agency Contact Person

Bob Anderson, Director, Bureau of Labor Standards, bob.anderson@dwd.state.wi.us, (608) 266−3345.

Analysis Prepared by the Department of Workforce Development

Statutory authority

Sections 104.04 and 227.11, Stats.

Statutes interpreted

Chapter 104, Stats., and 227.11, Stats.

Explanation of agency authority

Chapter 104, Stats., and Chapter DWD 272 provide that Wisconsin's minimum wage should be sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her reasonable comfort, physical well−being, decency, and moral well−being. Section 104.04, Stats., directs the Department to determine the state's minimum wage taking into consideration the effect of the wage on the economy of the state, including employment opportunities for low−wage workers and regional economic conditions within the state.

Summary of the proposed rule

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 will 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
Camp Counselors	Salary per week	Salary per week	
Adults, no board or lodging	$315	$350	exempt
Adults, with board only	$240	$265	exempt
Adults, with board and lodging	$189	$210	exempt
Minors, no board or lodging	$275	$350	exempt
Minors, with board only	$209	$265	exempt
Minors, with board and lodging	$165	$210	exempt

The proposed 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 value of 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 FLSA exempts any employee employed by an establishment that is an amusement or recreational establishment, organized camp, or religious or non−profit educational conference center, if either of the following apply:

- It does not operate for more than seven months in any calendar year.
- During the preceding calendar year, its average receipts for any six months of the year were not more than 33 1/3% of its average receipts for the other six months of the year.

The proposed increase to the state minimum wage may affect camp counselors and other seasonal amusement and recreational workers. In 2007, there were 2,401 Wisconsin workers that were paid less than $7.25 per hour in the Standard Occupational Classification codes for the categories of amusement and recreational attendants; recreation workers; lifeguards, ski patrol, and other recreational protective service workers; and tour guides and escorts. The Department does not know how many of these workers were employed by an establishment that is seasonal.

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.

Comparison with rules in adjacent states

Illinois. The minimum wage rate will be $7.75 effective July 1, 2008; $8.00 effective July 1, 2009; and $8.25 effective July 1, 2010.

Michigan. The minimum wage rate will be $7.40 per hour effective July 1, 2008.

Iowa. The minimum wage rate is $7.25 per hour.

Minnesota. The minimum wage rate is $6.15 per hour. The Governor recently vetoed a bill that would have increased the minimum wage rate to $6.75 per hour in July 2008 and $7.75 per hour in July 2009.

Summary of factual data and analytical methodologies

The proposed rule increases the state minimum wage rate to match the federal minimum wage rate effective July 24, 2009. Under the proposed rule, minors and agricultural workers will have the same minimum wage rate as adult nonagricultural workers. There are no special rates for minors or agricultural workers under federal law. The proposed rule does not eliminate these special categorical rates, which may differ from the adult nonagricultural rate in the future.

The camp counselor minimum wage is a weekly salary based on the hourly rate of $7.25 per hour for 48 hours. Camp counselors are exempt from the federal minimum wage law. The state has a special salary rate for camp counselors due to the difficulty in interpreting hours worked in many camp situations. The responsibilities of a camp counselor can vary widely. Some counselors are working 24 hours per day for 6 days per week under the interpretation of hours worked in s. DWD 272.12. The minimum weekly salary for camp counselors is an attempt at a reasonable and affordable rate for the special circumstances.

Analysis used to determine effect on small businesses

The number of workers that will be covered by the state minimum wage increase but are not covered by the federal minimum wage is very small. Also, most of the amusement and recreational workers who were paid less than $7.25 per hour in 2007 were already being paid at least $7.00 per hour.

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.

Fiscal Estimate

State fiscal effect

None

Local fiscal effect

None

Long−range fiscal implications

None

Submittal of Proposed Rules to the Legislature

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

Agriculture, Trade and Consumer Protection

CR 08−038

A rule−making order creating Subch. IV of Chapter ATCP 161, relating to the "Buy−Local" grant program.

Commerce

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

CR 08−037

A rule−making order revising Chapter Comm 131, relating to diesel truck idling reduction grants.

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.

Administration
CR 07−078

A rule−making order to revise Chapter Adm 43, relating to non−municipal electric utility low−income assistance fees.
Effective 9−1−08.

Administration
CR 07−079

A rule−making order to revise Chapter Adm 45, relating to low income assistance public benefits.
Effective 9−1−08.

Administration
CR 07−080

A rule−making order to repeal Chapter Adm 44, relating to energy conservation and efficiency and renewable resource programs.
Effective 9−1−08.

Commerce
Housing Assistance, Chs. Comm 150—
CR 08−008

A rule−making order to create Chapter Comm 156, relating to manufactured housing rehabilitation and recycling.
Effective 9−1−08.

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 07−012

A rule−making order to revise s. NR 1.212 (3) (a), relating to the referral of private timber sale requests to cooperating foresters.
Effective 9−1−08.

Public Instruction
CR 08−007

A rule−making order to create Chapter PI 31, relating to grants for science, technology, engineering, and mathematics programs.
Effective 9−1−08.

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