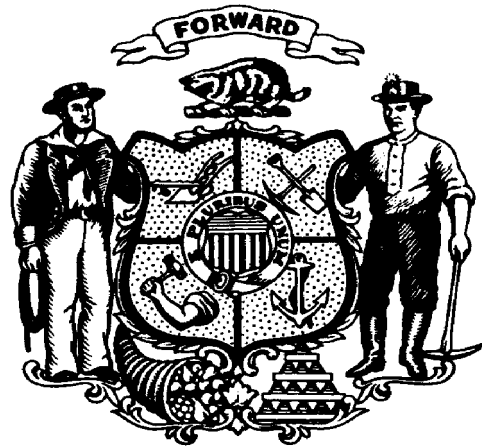


# Wisconsin Administrative Register

No. 620



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## Emergency Rules Now in Effect

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

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

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

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

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

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

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### Agriculture, Trade & Consumer Protection

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

#### Finding of Emergency

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

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

dealers who normally supply significant quantities of firewood to parks located more than 50 miles away.

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

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

<b>Publication Date:</b>	<b>May 22, 2007</b>
<b>Effective Date:</b>	<b>May 22, 2007</b>
<b>Expiration Date:</b>	<b>September 19, 2007</b>
<b>Hearing Date:</b>	<b>June 26, 2007</b>

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

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

#### Exemption From Finding of Emergency

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

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

the Act and continue working until permanent rules are implemented.

**Publication Date:** June 1, 2007  
**Effective Date:** June 1, 2007  
**Expiration Date:** October 29, 2007  
**Hearing Date:** June 27, 2007

### **Commerce (Financial Resources for Businesses and Communities, Chs. Comm 104-131)**

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

#### **Exemption From Finding of Emergency**

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

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

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

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

### **Dentistry Examining Board**

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

#### **Finding of Emergency**

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

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

### **Elections Board**

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

#### **Exemption From Finding of Emergency**

The Elections Board finds that under Section 180 of the non-statutory provisions of 2005 Wisconsin Act 451, in subsection (4), the Elections Board may promulgate emergency rules under s. 227.24, Stats., implementing s. 6.36 (6), Stats., as created by Wisconsin Act 451. Notwithstanding s. 227.24 (1) (c) and (2), Stats., emergency rules promulgated under subsection (4) remain in effect until the date on which permanent rules take effect. Notwithstanding s. 227.24 (1) (a) and (3), Stats., the Elections Board is not required to provide evidence that promulgating a rule under subsection (4) as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under subsection (4).

This amended rule interprets ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats. The rule requires that persons who request copies of information from the Statewide Voter

registration System must pay, for each such copy, a charge calculated under the provisions of the rule.

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

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

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

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

#### **Finding of Emergency**

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

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

In the previous rulemaking (Clearinghouse Rule 05-033) the prior authorization requirement was removed for most procedures that had high rates of approval (greater than 75%). The change was intended to reduce the staff time required for dental offices to process prior authorization requests. The Department did not intend to remove the requirement for prior authorization for orthodontia and other services. The Department specifically stated, in Clearinghouse Rule 05-033,

that “Procedures where appropriate pricing requires a high degree of clinical knowledge (e.g., orthodontics and TMJ surgery), and procedures with strict time limitations (e.g., dentures) are also proposed to retain prior authorization.”

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

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

<b>Publication Date:</b>	<b>April 30, 2007</b>
<b>Effective Date:</b>	<b>April 30, 2007</b>
<b>Expiration Date:</b>	<b>September 27, 2007</b>

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### **Natural Resources (4) (Fish and Game, etc., Chs. NR 1—)**

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

#### **Finding of Emergency**

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

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a “notifiable” disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The

presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

**Publication Date:** April 8, 2007  
**Effective Date:** April 8, 2007  
**Expiration Date:** September 5, 2007  
**Hearing Date:** May 3, 10 and 17, 2007

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

#### **Finding of Emergency**

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

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

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

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

3. Rules adopted revising emergency rules affecting **chs. NR 19 and 20** relating to control of fish diseases and invasive species.

#### **Finding of Emergency**

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

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater

drum collected from Little Lake Butte des Morts were infected with the VHS virus. Earlier VHS had been discovered in the Great Lakes, and was known to be moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish disease to reach the Mississippi drainage basin. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from infected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in Wisconsin is therefore a threat to the public health or safety or to the environment.

**Publication Date:** May 27, 2007  
**Effective Date:** May 27, 2007  
**Expiration Date:** September 5, 2007  
**Hearing Date:** July 11, 2007

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

#### **Finding of Emergency**

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

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

### **Natural Resources (2) (Environmental Protection - Water Regulation, Chs. NR 300-)**

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

#### **Finding of Emergency**

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

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

**Publication Date:** June 10, 2007  
**Effective Date:** June 10, 2007  
**Expiration Date:** November 7, 2007  
**Hearing Date:** July 10, 2007

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

#### **Finding of Emergency**

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

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits standards that require decontamination of equipment for invasive species and viruses. Without emergency rules to create new general permit standards, any condition imposed would be limited to individual permits only with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits standards to be in effect for the 2007 summer season, with specific standards that require decontamination of equipment for invasive species and viruses.

In addition, The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for

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

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

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

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

#### **Finding of Emergency**

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

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

**Publication Date:** April 1, 2007  
**Effective Date:** April 1, 2007  
**Expiration Date:** August 29, 2007  
**Hearing Date:** June 20, 2007

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## Scope Statements

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### Commerce

#### Subject

The rules affect chs. Comm 2, 5, and 34, relating to amusement rides.

#### Objective of the Rule

The objective of the rule is to update the Administrative Code chapter Comm 34, Amusement Rides, to reflect current industry safety practices, and to evaluate administrative, and enforcement aspects of the program and to make permanent any emergency rules related to amusement rides. This may be accomplished in more than one rule-making endeavor.

#### Policy Analysis

Chapter Comm 34 establishes minimum standards and practices for the design, construction, installation, operation, inspection and maintenance of amusement rides. The code also specifically addresses bungee jumping operations and go-kart, dune buggy and all-terrain vehicle operations.

The alternative of not revising the code would result in rules not being up-to-date with current industry practices, therein, possibly exposing amusement riders to greater risks.

#### Statutory Authority

The statutory authority for the rule is contained in sections 101.02 (15) (h) to (j), 101.17 and 101.19 (1) (b), Stats.

#### Entities Affected by the Rule

The rule will affect any entity, private or public, that owns and operates existing amusement rides. The rule will also affect any entity which proposes to design and install a new amusement ride.

#### Comparison with Federal Regulations

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

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

The department estimates approximately 300 hours will be needed to perform the review and develop any needed rule changes. This time includes forming and meeting with an advisory council, drafting the rule changes and processing the changes through public hearings, legislative review, and adoption. The department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

### Elections Board

#### Subject

The rules affect ch. EIBd 12, regarding the certification and training of municipal clerks

#### Objective of the Rule

Per 2005 Wisconsin Act 451, the Elections Board shall, “by rule, prescribe requirements for, and the content of, training required of municipal clerks under s. 7.15 (1m). The board may provide such training directly or arrange for such training to be provided by other organizations. The rules shall provide a method for notifying the relevant municipal governing body if a municipal clerk fails to attend required training.”

#### Policy Analysis

With the many recent changes in election law, the legislature has determined that municipal clerks need to receive up-dated training in election law. To ensure that each clerk receives the required training, as the statute requires the Board to do, each clerk is required to be certified based on the training provided under the rule. The statute does not give the Board the option of considering alternatives.

#### Statutory Authority

ss. 5.05 (1) (f), 227.11 (2) (a), and s. 7.315, Stats.

#### Entities Affected by the Rule

All municipal clerks and the staff of the City of Milwaukee Board of Election Commissioners will be affected by the rule in that they are required to complete the training that is provided under the rule.

#### Comparison with Federal Regulations

No federal regulation governs the training or certification of municipal clerks. The policy of the Help America Vote Act, however, supports the training of election officials – a category that includes municipal clerks.

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

At least 80 hours of state employees’ time.

### Commissioner of Insurance

#### Subject

The rules affect sections Ins 6.79 and 8.10, Wis. Adm. Code, relating to advisory councils and committees

#### Objective of the Rule

To implement and interpret ss. 15.04, 15.09 and 601.20, Wis. Stats., relating to the formation and function of advisory

councils or committees created by the commissioner to assist the office of the commissioner of insurance in dealing with regulatory insurance issues.

#### **Policy Analysis**

Currently ss. Ins 6.79 and 8.10, Wis. Adm. Code, create three councils by rule. The commissioner also may appoint other advisory councils or committees under ss. 15.04 and 601.20, Wis. Stats. One of the advisory councils created by rule no longer functions as it addressed statutory provisions that have been repealed. The commissioner intends to consider adopting a rule to create greater administrative flexibility to adjust the focus and composition of advisory councils to reflect issues currently being addressed by the agency. It is likely that the proposed rule will continue to provide for councils focused on the topics of life, health and property and casualty but also provide for flexibility to address specific topics. The commissioner expects that the past OCI practice of maintaining advisory councils will continue and perhaps expand but with a focus and composition reflecting the subjects that are currently being considered by the agency. The proposed rule will also describe the governance of and appointment process to those committees and councils.

#### **Statutory Authority**

The statutory authority for this rule is s. 601.20, Wis. Stats.

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

The existing councils will likely be affected by the proposed rule. However their functions are likely to be retained through a modified advisory council arrangement.

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

There is no federal regulation that addresses the anticipated content of this rule.

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

200 hours and no other resources are necessary.

### **Veterans Affairs**

#### **Subject**

The rules affect VA 2.02 (3) (b), relating to extending the period for submitting a preapplication for the tuition reimbursement grant program.

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

The Department seeks to amend the rule related to the preapplication process required under s.45.20 (2) (f), Stats., to allow veteran students returning from service sufficient time to meet the statutory requirements for obtaining a tuition reimbursement grant.

#### **Policy Analysis**

Under current program rules, veterans must submit a preapplication for the tuition reimbursement grant program within 30 days of the commencement of a term. Veterans returning from deployment often enroll in classes without properly completing the preapplication requirement of the

tuition reimbursement grant program. As a result, some veteran students have failed to qualify for the tuition reimbursement grant. The Department believes that extending the period for submitting a preapplication will provide these returning veterans a more equitable basis for obtaining the tuition reimbursement grant.

#### **Statutory Authority**

Section 45.20 (2) (f).

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

The amended rule will affect veterans applying for the benefit, the department, veterans school officials, and county veterans service officers.

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

The educational program is entirely administered under the authority of state law. There is no existing or proposed federal regulation that has any bearing upon the proposed rule.

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

Approximately 5 hours of Department of Veterans Affairs staff time will be needed to promulgate the rule.

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## Rule-Making Notices

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### Notice of Hearings

#### Agriculture, Trade and Consumer Protection

[CR 07-073]

(Reprinted from 7/31/07 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed amendment to chapters ATCP 99, 100, and 101, Wis. Adm. Code, relating to the Agricultural Producer Security.

DATCP will hold three public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Wednesday, October 31, 2008 for additional written comments.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by August 6, 2007, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4928. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

#### Submission of Comments and Copy of Rule

Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to [kevin.leroy@wisconsin.gov](mailto:kevin.leroy@wisconsin.gov) or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4928 or emailing [kevin.leroy@wisconsin.gov](mailto:kevin.leroy@wisconsin.gov). Copies will also be available at the hearings. To view the proposed rule online, go to:

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

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

#### Hearing Dates and Locations

Thursday, **August 16, 2007**, 2:00 p.m.

DATCP Northwest Regional Office  
3610 Oakwood Hills Pkwy  
Eau Claire, WI 54701-7754

Tuesday, **August 21, 2007**, 2:00 p.m.

DATCP Northeast Regional Office  
Room 152A  
200 N Jefferson St.  
Green Bay, WI 54301

Wednesday, **August 22, 2007**, 10:00 a.m.

Department of Agriculture, Trade and Consumer Protection  
2811 Agriculture Dr.  
Board Room (CR-106)  
Madison, WI 53718-6777

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

Wisconsin's agricultural producer security program helps protect agricultural producers against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors").

Contractors must be licensed by the Department of Agriculture, Trade and Consumer Protection ("DATCP") and pay license fees. Most contractors must also pay assessments to an agricultural producer security fund ("fund"). In the event of a contractor default, DATCP may compensate producers from the fund.

This rule changes current grain dealer, grain warehouse keeper and vegetable contractor license fees. This rule changes current fund assessments for grain dealers (deferred payment assessment) and grain warehouse keepers, and changes required *minimum* fund assessments for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. This rule does not make any other significant changes in current contractor regulations.

#### Statutory authority

Sections 93.07(1), 126.81 and 126.88, Stats.

#### Statutes interpreted

Sections 126.81 and 126.88, States.

#### Agency authority

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules needed to implement laws under its jurisdiction. DATCP also has authority, under ss. 126.81 and 126.88, Stats., to establish license fees and fund assessments under the agricultural producer security program. Chapter 126, Stats., establishes license fees and fund assessments, but authorizes DATCP to change those license fees and fund assessments by rule.

Under current law, DATCP *must* modify fund assessments whenever fund balances fall outside a specified range. The fund

balance attributed to the grain warehouse keeper sector currently falls below the required minimum of \$200,000. Therefore, DATCP *must* modify fund assessments for grain warehouse keepers. DATCP is authorized, but not required, to modify fund assessments for other contractors.

### **Background**

DATCP administers the agricultural producer security program under ch. 126, Stats. DATCP has adopted rules to implement the program. The rules are contained in chs. ATCP 99-101, Wis. Adm. Code. Under current law:

- Licensed contractors must pay *license fees* to fund DATCP administration of the agricultural producer security program. Administration includes grain warehouse inspections, review of contractor financial statements, license administration and response to contractor financial defaults and law violations.
- Most contractors (“contributing contractors”) must pay *fund assessments* to finance the agricultural producer security fund. The fund is held in trust, for the benefit of producers. If a contractor defaults on payments to agricultural producers, DATCP may reimburse producers from the fund. Fund assessments are like insurance premiums, and are based on contractor size, financial condition and risk practices.

Prior to 2003, DATCP administrative costs were paid by a combination of general tax revenue (“GPR”) and contractor license fees. However, the 2003-2004 Biennial Budget Act eliminated virtually all GPR funding for program administration. That made it necessary to transfer staff from GPR funding to license fee funding. Partly as a result of that change, current license fee funding is no longer adequate to cover administrative costs. There has been a gradual growth in administrative costs, due to factors (such as statewide union contracts for accountants and auditors) that are outside DATCP control.

Funding shortfalls are especially severe in the grain dealer and grain warehouse keeper programs. Administrative costs now annually exceed license fee revenues by over \$200,000 in each of those programs, and each program has a negative cash balance of more than \$350,000. In the vegetable contractor program, administrative costs now annually exceed license fee revenues by over \$20,000, and the program has a negative cash balance (January 1, 2007) of more than \$50,000.

Deficits in the grain and vegetable administration accounts are currently being covered by milk contractor license fee revenues and by fund assessment revenues that would normally go to the producer security fund. That unfairly affects milk contractors and reduces fund coverage for *all* producers (grain, milk and vegetable).

This rule increases annual license fees for grain dealers, grain warehouse keepers and vegetable contractors, to remedy current inequities and provide minimally adequate funding for program administration. This rule also adjusts fund assessments,

especially for grain warehouse keepers (for whom an adjustment is required by law).

Notwithstanding this rule, the total of all contractor payments under the producer security (license fees plus fund assessments) will actually *decline* over the next few years, because of fee credits and declining formula rates that are built into the producer security law itself. This rule will slow, but not reverse, that overall decline. This rule will not have any significant impact on contractors’ overall business costs.

### **Rule contents**

#### *Grain Dealer License Fees*

Current Fees. Under current law, a grain dealer must pay the following annual license fees and surcharges:

- A license processing fee of \$25.
- One of the following fees:
  - \$500 if the grain dealer purchased at least \$500,000 worth of producer grain in this state during the grain dealer’s last completed fiscal year.
  - \$200 if the grain dealer purchased at least \$50,000 but less than \$500,000 worth of producer grain in this state in the grain dealer’s last completed fiscal year.
  - \$50 if the grain dealer purchased less than \$50,000 worth of producer grain in this state in the grain dealer’s last completed fiscal year.
- A \$225 fee per business location in excess of one location (but only if the grain dealer purchased \$500,000 worth of producer grain in this state during the grain dealer’s last completed fiscal year).
- A \$45 fee per truck, in excess of one truck, that the grain dealer uses to haul grain in this state.
- A \$425 surcharge if the grain dealer submits a required financial statement that is not an audited financial statement.
- A \$500 surcharge if the grain dealer operated without a license at any time during the preceding year.
- A \$100 surcharge if the grain dealer, during the preceding year, failed to file a required financial statement by the required filing deadline.
- A \$100 surcharge if the grain dealer failed to file a license renewal application by the license expiration date of August 31.

Proposed fees. This rule changes the calculation of grain dealer license fees. Under this rule, a grain dealer must pay the following fees and surcharges:

- A license processing fee of \$25 (same as current law).
- A fee equal to the lesser of the following amounts:
  - 0.175 cents per bushel of producer grain that the grain dealer procured in this state during the grain dealer’s last completed fiscal year (the grain dealer must report the number of bushels of grain procured).
  - \$15,000.

- \$100 per business location in excess of one location (regardless of the grain dealer’s annual grain purchase amount).
- A surcharge of \$500 if the grain dealer operated without a license at any time during the preceding year (same as current law).
- A surcharge of \$100 if the grain dealer, during the preceding year, failed to file a required financial statement by the required filing deadline (same as current law).
- A surcharge of \$100 if the grain dealer failed to file a license renewal application by the license expiration date of August 31 (same as current law).

This rule *eliminates* the following current grain dealer fees and surcharges:

- \$45 fee per truck.
- \$425 surcharge for submitting a required financial statement that is not an audited financial statement.

*Grain Dealer Fund Assessments*

Current Assessments. Under current law, a contributing grain dealer must pay the following annual fund assessments:

- A *basic assessment*, based on a formula that considers the total dollar value of Wisconsin grain purchased in the grain dealer’s last completed fiscal year, the grain dealer’s current ratio, and the grain dealer’s debt-to-equity ratio. Other things equal, the formula yields declining basic assessments over time.
- A *deferred payment assessment*, if the grain dealer uses deferred payment contracts (which carry higher financial risk). The assessment equals total deferred payments for Wisconsin grain in the grain dealer’s last completed fiscal year, multiplied by the following rate:
  - 0.0035 if the grain dealer has contributed to the fund for less than 5 years.
  - 0.002 if the grain dealer has contributed to the fund for 5 years or more.

Under current law, there is a minimum total assessment of \$20 (basic assessment plus deferred payment assessment).

Proposed Assessments.

- Basic assessment. This rule does not change the calculation of a grain dealer’s basic fund assessment (the formula continues to generate declining assessments over time), except that this rule creates a new minimum assessment based on volume (applies only to basic assessment):
  - \$20 for grain dealers who procured less than \$500,000 worth of Wisconsin grain in the preceding license year.
  - \$200 for grain dealers who procured at least \$500,000 but less than \$3,000,000 worth of Wisconsin grain.
  - \$500 for grain dealers who procured Wisconsin grain worth \$3,000,000 or more.

- Deferred payment fund assessment. Under this rule, the deferred payment assessment equals the grain dealer’s total deferred payments for Wisconsin grain in the grain dealer’s last completed fiscal year, multiplied by 0.0035 (regardless of how long the grain dealer has contributed to the fund). There is no minimum deferred payment assessment.

*Grain Warehouse Keeper License Fees*

Current fees. Under current law, a grain warehouse keeper must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25, plus an additional nonrefundable processing fee of \$25 for each separate warehouse in excess of one warehouse.
- An inspection fee based on the combined capacity of the grain warehouse keeper’s warehouses:

Inspection Fee	Combined Warehouse Capacity (Bushels)
\$ 500	Less than 150,000
\$ 550	At least 150,000 but less than 250,000
\$ 600	At least 250,000 but less than 500,000
\$ 650	At least 500,000 but less than 750,000
\$ 700	At least 750,000 but less than 1,000,000
\$ 800	At least 1,000,000 but less than 2,000,000
\$ 900	At least 2,000,000 but less than 3,000,000
\$1,000	At least 3,000,000 but less than 4,000,000
\$1,100	4,000,000 or more.

- A supplemental inspection fee of \$275 for each grain warehouse that the grain warehouse keeper operates in excess of one warehouse.
- A surcharge of \$500 if the grain warehouse keeper operated without a license at any time during the preceding year.
- A surcharge of \$100 if the grain warehouse keeper failed to file an annual financial statement by the applicable deadline.
- A surcharge of \$100 if the applicant fails to renew a license by the license expiration date of August 31.

Proposed Fees. This rule changes the calculation of grain warehouse *inspection* fees, but makes no other changes to current grain warehouse keeper license fees or surcharges. The current inspection fee schedule (see above) is replaced by a formula. Under the new formula, a grain warehouse keeper pays an annual inspection fee equal to the lesser of the following amounts:

- The warehouse keeper’s highest daily grain obligations to depositors (in bushels) in the preceding license year, multiplied by 0.3 cent per bushel.
- \$15,000.

*Grain Warehouse Keeper Fund Assessments*

Current Assessments. Under current law, a grain warehouse keeper must pay an annual fund assessment based on a formula that considers the warehouse keeper’s licensed storage capacity, current ratio and debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments. Under this rule, a grain warehouse keeper must pay an annual fund assessment that is 50% higher than the assessment generated by the current formula (the formula does not change, and continues to yield declining assessments over time). There is a new minimum assessment based on storage volume:

- \$20 for grain warehouse keepers whose storage capacity is less than 300,000 bushels.
- \$100 for grain warehouse keepers whose storage capacity is at least 300,000 but less than 500,000 bushels.
- \$250 for grain warehouse keepers whose storage capacity is 500,000 bushels or more.

#### *Milk Contractor License Fees*

This rule makes no changes to current milk contractor license fees.

#### *Milk Contractor Fund Assessments*

Current Assessments. Under current law, a contributing milk contractor must pay an annual fund assessment based on a formula that considers the milk contractor's total Wisconsin milk payroll obligations for the contractor's last completed fiscal year, the milk contractor's current ratio, and the milk contractor's debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments. This rule does not change the calculation of milk contractor fund assessments (the current formula continues to generate declining assessments over time), except that this rule creates a new minimum assessment based on the contractor's total Wisconsin milk payroll obligations in the contractor's last completed fiscal year:

- \$20 for milk contractors with annual Wisconsin milk payroll obligations of less than \$1,500,000.
- \$200 for milk contractors with annual Wisconsin milk payroll obligations of at least \$1,500,000 but less than \$6,000,000.
- \$500 for milk contractors with annual Wisconsin milk payroll obligations of \$6,000,000 or more.

#### *Vegetable Contractor License Fees*

Current Fees. Under current law, vegetable contractors must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25.
- A fee of \$25 plus 5.75 cents for each \$100 in Wisconsin vegetable procurement contract obligations (to vegetable producers) that the contractor incurred during the contractor's last completed fiscal year. This fee does not apply to "nonparticipating processing potato buyers."
- A \$500 fee if the vegetable contractor is a "nonparticipating processing potato buyer."
- A \$500 surcharge if the vegetable contractor operated without a license at any time during the preceding year.

- A \$100 surcharge if, during the preceding year, the vegetable contractor failed to file a required financial statement by its due date.
- A \$100 surcharge if the vegetable contractor failed to file a license renewal application by the license expiration date of January 31.

Proposed fees. This rule increases the license fee component that is based on annual Wisconsin vegetable procurement contract obligations. It increases that fee component to \$25 plus 8.75 cents (currently 5.75 cents) for each \$100 in contract obligations.

This rule replaces the current \$500 fee for "nonparticipating potato buyers" with a fee equal to the lesser of the following amounts:

- \$25 plus 8.75 cents for each \$100 in annual contract obligations (same as other vegetable contractors).
- \$2,000.

This rule makes no other changes to current vegetable contractor license fees or surcharges.

#### *Vegetable Contractor Fund Assessments*

Current Assessments. Under current law, a contributing vegetable contractor must pay an annual fund assessment based on a formula that considers the contractor's total vegetable procurement contract obligations during the contractor's last completed fiscal year, the contractor's current ratio, and the contractor's debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments. This rule does not change the calculation of vegetable contractor fund assessments (the current formula continues to generate declining assessments over time), except that this rule creates a new minimum assessment based on contract volume:

- \$20 for vegetable contractors with contract obligations of less than \$500,000.
- \$200 for vegetable contractors with contract obligations of at least \$500,000 and less than \$4,000,000.
- \$500 for vegetable contractors with contract obligations of \$4,000,000 or more.

#### **Business Impact**

##### *Agricultural Producers*

This rule will benefit Wisconsin producers of grain, milk and vegetables, by preventing the erosion of the producer security program that helps protect them against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively "contractors").

This rule will generate enough license fee revenue to continue critical financial security monitoring activities, such as grain warehouse inspections and review of contractor financial statements. Without this rule, DATCP would have to curtail

key monitoring activities that help control potentially catastrophic financial risks to producers and to the producer security fund.

This rule will also reverse the current diversion of fund assessment revenues from the agricultural producer security trust fund (to subsidize operating deficits in the grain and vegetable sectors). That will yield a slightly increased rate of fund growth which will, in turn, provide greater protection for producers in the event of a catastrophic contractor default.

This rule will not increase costs for agricultural producers, or have any significant impact on commodity prices paid to producers.

*Contractors*

This rule affects license fees and fund assessments paid by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors, but does not change other contractor regulations.

Current Cost to Contractors. Current license fees and fund assessments represent a *very* small share of overall contractor costs. For example:

- Current grain dealer license fees and fund assessments represent only about *11 hundredths of one percent* of the grain dealers’ annual Wisconsin grain procurement costs (\$672,000 in fees and fund assessments, compared to \$599 million in grain purchased from Wisconsin producers in FY 2005-06).
- Current grain warehouse keeper license fees and fund assessments represent less than *2 hundredths of one percent* of the grain warehouse keepers’ annual Wisconsin “cost of sales” (\$210,000 in fees and fund assessments, compared to about \$1.7 billion in “cost of sales” for FY 2005-06).
- Current milk contractor license fees and fund assessments represent only about *3 hundredths of one percent* of the contractors’ annual Wisconsin milk procurement costs (\$1.2 million in producer security license fees and fund assessments, compared to about \$3.5 billion paid for milk produced by Wisconsin farmers in FY 2005-06).
- Current vegetable contractor license fees and fund assessments represent only about *8 hundredths of one percent* of the contractors’ annual vegetable procurement costs (\$138,000 in producer security license fees and fund assessments, compared to \$170 million in procurement contract obligations to Wisconsin producers in FY 2005-06).

Current contractor license fees and fund assessments represent an even smaller share of *overall* contractor costs (including costs for labor, buildings, equipment, debt service, overhead, etc., in addition to commodity procurement costs).

Declining Costs. Total contractor license fees and fund assessments will actually *decline* over the next few years, because of fee credits and declining formula rates built into the producer security law itself. This rule will reduce the rate at which overall contractor fees and fund assessments decline.

But even with this rule, the total of all contractor license fees and fund assessments will be about *5% lower* in FY 2009-10 than in FY 2005-06 (other things equal).

Total license fees and fund assessments will decline in every business sector *except* the grain dealer and grain warehouse sector, where license fees and assessments will increase to pay a proportionate share of administrative costs and to provide a proportionate contribution to the producer security fund.

The following table shows *combined total license fees and fund assessments* by business sector for FY 2005-06. It also compares projected totals for FY 2009-10 *with* and *without* this rule:

	FY 2005-06	FY 2009-10* <i>Without this rule</i>	FY 2009-10* <i>With this rule</i>
Grain Dealers	\$672,000	\$395,000	\$674,000
Grain Warehouse Keepers	\$210,000	\$169,000	\$428,000
Milk Contractors	\$1,272,000	\$1,018,000	\$1,027,000
Vegetable Contractors	0	\$42,000	\$48,000
<b>TOTAL</b>	<b>\$2,292,000</b>	<b>\$1,624,000</b>	<b>\$2,177,000</b>

\* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

The projected decline in total license fees and fund assessments (with or without this rule) results from the following features built into the current producer security law (this rule will not change those features):

- License fee credits. If the fund balance contributed by an industry sector reaches a specified statutory threshold, a portion of the balance is returned to contributing contractors in that sector (as a credit on their license fees). Contributing vegetable contractors are already enjoying credits that significantly reduce their license fees, and milk contractors began receiving credits in May, 2007. Those credits will dramatically reduce fees for contributing contractors, even when this rule is in effect.
- Falling assessment rates. Under the producer security law, fund assessment rates decline after a contractor has contributed to the fund for a specified number of years (4 to 6 years depending on contractor type and financial condition). Because the producer security fund is about five years old, most contributing contractors are now beginning to pay significantly lower fund assessments than they were a short time ago. That trend will continue, regardless of this rule.

Effects Vary Between Contractors. The impact of this rule may vary considerably between individual contractors within a business sector. License fees and assessments may be affected

by a number of variables, including contractor size, contractor financial strength, contractor risk practices and commodity prices.

For many contractors, this rule will slow the rate at which the contractor's fees and fund assessments would otherwise decline. Some contractors (especially grain warehouse keepers) may have increased fees and fund assessments. For a few contractors, this rule will actually speed the reduction of fees and fund assessments. Many contractors (especially milk contractors) will be unaffected by this rule.

#### ***Federal regulations***

There is no federal producer security program related to milk. The United States department of agriculture (USDA) administers a producer security program for federally licensed *grain warehouses* that store grain for producers. Grain warehouses may choose whether to be licensed under state or federal law. Federally-licensed warehouses are exempt from state warehouse licensing and security requirements. State-licensed warehouses are likewise exempt from federal requirements.

The federal grain warehouse program provides little or no protection against financial defaults by *grain dealers*. Grain dealers are persons who buy and sell grain. Sometimes, grain dealers also operate grain warehouses. DATCP currently licenses grain dealers. Licensed warehouse keepers must also hold a state grain dealer license if they engage in grain dealing.

USDA has informally proposed to regulate *grain dealer* activities (grain "merchandising") by federally licensed warehouse keepers, to the exclusion of state regulation. But USDA has not yet officially introduced its proposed regulations. In any case, the federal regulations would not apply to state-licensed grain warehouses, or to *grain dealers* who do not operate a warehouse.

There is a federal security program for vegetables. That security program is mainly limited to fresh market vegetables, and consists of a priority lien against vegetable-related assets. Wisconsin's vegetable security program applies only to processing vegetables (not fresh market vegetables covered by federal regulations). Wisconsin's program uses an indemnity fund, rather than a priority lien-type program. Unlike the *federal* priority lien program, a *state* priority lien program would not work because it would be preempted by federal bankruptcy law.

There may be some limited overlap between the Wisconsin and federal programs, but that overlap is justified because the scope of federal coverage is not entirely clear. Overlap was reduced by recent Wisconsin legislation, which permits certain potato buyers covered under the federal program to opt out of most of the state program.

#### ***Surrounding states regulations***

In Minnesota, contractors must be licensed to procure grain, milk or processing vegetables from producers, or to operate

grain warehouses. Regulated contractors must file bonds as security against default. The program is financed through industry fees and general tax revenues.

Neither Iowa nor Illinois have producer security programs for milk or vegetables. However, both states maintain indemnity funds to protect grain producers. Fund assessments are based solely on grain volume. In Wisconsin, by contrast, fund assessments are based on grain volume and financial condition. Iowa and Illinois finance their programs through industry fees and general tax revenues.

Michigan has the following producer security programs:

- Potato dealers must be licensed, and must post bonds as security against defaults. (Wisconsin's vegetable security program includes, but is not limited to, potatoes.)
- Dairy plants that fail to meet minimum financial standards must file security or pay cash for milk.
- Grain producers have the option of paying premiums into a state fund. In the event of a grain default, the fund reimburses participating producers.
- These programs are financed through industry fees and general tax revenues.

#### **Fiscal Estimate**

Under the agricultural producer security law:

- Licensed contractors must pay *license fees* to fund DATCP administration of the agricultural producer security program. Administration includes grain warehouse inspections, review of contractor financial statements, license administration, and response to contractor financial defaults and law violations.
- Most contractors ("contributing contractors") must pay *fund assessments* to finance the agricultural producer security fund. The fund is held in trust, for the benefit of producers. If a contractor defaults on payments to agricultural producers, DATCP may reimburse producers from the fund.

Prior to 2003, DATCP administrative costs were paid by a combination of general tax revenue ("GPR") and contractor license fees. However, as part of the GPR reductions in Act 33, the 2003-2005 Biennial Budget, 2.9 FTE positions and support costs were converted from GPR to the Agricultural Producer Security SEG fund. Partly as a result of that change, current license fee funding is no longer adequate to cover administrative costs. There has been a gradual growth in administrative costs, due to factors (such as statewide union contracts for accountants and auditors) that are outside DATCP control.

Funding shortfalls are especially severe in the grain dealer and grain warehouse keeper programs. Administrative costs now annually exceed license fee revenues by over \$200,000 in each of those programs, and each program has a negative cash balance of more than \$336,000. In the vegetable contractor program, administrative costs now annually exceed license fee revenues by over \$20,000.

Deficits in the grain and vegetable administration sub accounts affect the total cash balance in Agriculture Producer Security Fund. This unfairly affects milk contractors since the total fund balance is incorporated into the formula that calculates their required security amounts and also affects the total funds available to pay a default.

This rule increases annual license fees for grain dealers, grain warehouse keepers and vegetable contractors, to remedy current inequities and provide minimally adequate funding for program administration (the fee increases for vegetable contractors will be largely offset by fee credits built into the producer security law). This rule also adjusts fund assessments, especially for grain warehouse keepers (for whom an adjustment is required by law).

Notwithstanding this rule, total revenue derived from contractor payments under the producer security program (license fees plus fund assessments) will actually *decline* over the next few years, because of fee credits and declining formula rates that are built into the producer security law itself. This rule will slow, but not reverse, that overall decline.

License Fee Revenues. The following table shows actual license fee revenues for FY 2005-06, compared to *projected* license fee revenue in FY 2009-10 (*with* and *without* this rule):

Total License Fee Revenues (Net of Contractor Credits)			
	FY 2005-06	FY 2009-10* <i>Without this rule</i>	FY 2009-10* <i>With this rule</i>
Grain Dealers	\$160,000	\$155,000	\$405,000
Grain Warehouse Keepers	\$159,000	\$149,000	\$393,000
Milk Contractors	\$363,000	\$159,000	\$159,000
Vegetable Contractors	\$16,000	\$5,000	\$8,000
<b>TOTAL</b>	<b>\$698,000</b>	<b>\$468,000</b>	<b>\$965,000</b>

\* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Projected milk and vegetable contractor license fee revenues for FY 2009-10 are affected, to a very considerable degree, by license fee credits built into the producer security law itself. When the producer security fund balance attributable to an industry sector (such as milk or vegetables) reaches a specified statutory “trigger” amount, a portion of the balance is returned to contributing contractors in that sector (as a credit on their license fees).

Contributing vegetable contractors are already enjoying credits that significantly reduce their license fees, and milk contractors began receiving credits in May, 2007. Grain dealers and grain warehouse keepers do not yet qualify for these credits, because their fund contributions have not yet attained the required level (nor are they likely to do so prior to FY 2009-10).

Increased annual license fee revenues will be adequate to cover annual DATCP administrative costs. To the extent that annual license fee revenues exceed annual administrative costs,

the additional revenues will offset the deficit in the administrative sub account.

*Producer Security Fund; Assessment Revenues*

The agricultural producer security fund currently has a balance of approximately \$7,493,000. No more than 60% of the fund balance can be paid out in any individual contractor default. The current fund balance is adequate to cover defaults by most, but not all, individual contractors. Continued fund growth will improve protection for producers, and minimize the need for supplementary security from contractors.

Contributing contractors pay fund assessments to finance the agricultural producer security fund. Annual assessment revenues will decline over the next few years (*with* or *without* this rule), because of fee credits and declining formula rates built into the producer security law. Annual assessment revenues will decline across all business sectors. This rule will slow (but not reverse) the projected decline of annual assessment revenues.

The following table shows actual fund assessment revenues for FY 2005-06, and *projected* assessment revenues for FY 2009-10 (*with* and *without* this rule):

Total Fund Assessment Revenues			
	FY 2005-06	FY 2009-10* <i>Without this rule</i>	FY 2009-10* <i>With this rule</i>
Grain Dealers	\$512,000	\$240,000	\$269,000
Grain Warehouse Keepers	\$51,000	\$20,000	\$35,000
Milk Contractors	\$909,000	\$859,000	\$868,000
Vegetable Contractors	\$122,000	\$37,000	\$40,000
<b>TOTAL</b>	<b>\$1,594,000</b>	<b>\$1,156,000</b>	<b>\$1,212,000</b>

\* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Cash in the assessment sub account currently covers the negative cash balances in the grain and vegetable administration sub accounts. That is slowing the rate of growth in the assessment sub account, and reducing the fund coverage for all producers (grain, milk, and vegetable). By correcting current grain and vegetable license fee revenue shortfalls, this rule will eliminate the current drain on the producer security fund. That, combined with the adjustment of fund assessment rates, will cause the fund balance to grow at a faster rate. Faster growth will increase protection for producers, and reduce supplementary security demands on contractors.

Without this rule, DATCP projects that the fund balance will grow to \$8,332,000 at the end of FY 2009-10. With this rule, DATCP projects that the fund balance will grow to \$9,425,000 by the end of FY 2009-10. Under this rule, the fund balance amount attributable to grain warehouse keeper assessments will

build over several years toward the required statutory minimum (it currently falls short of the required minimum).

**Notice of Hearings  
Public Instruction  
[CR 07-058]**

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.76 (5) (b) and 227.11 (2) (a), Stats., and interpreting ss. 115.76 (5) (a) 10. and (b), Stats., the Department of Public Instruction will hold public hearings as follows to consider the amending of s. PI 11.36, relating to the identification of children with specific learning disabilities and significant developmental delays.

**Hearing Dates and Locations**

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Kathy Laffin, Consultant, Specific Learning Disabilities, at (608) 266-2841 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

<b>September</b>		<b>25,</b>	<b>2007</b>
4:00	-	7:00	p.m.
Chippewa			Falls
CESA			10
725	West	Park	Avenue
Conference			Center
<b>October</b>		<b>2,</b>	<b>2007</b>
4:00	-	7:00	p.m.
Brookfield			
CESA			1
19601	West	Bluemound	Road
Suite			200
<b>October</b>		<b>3,</b>	<b>2007</b>
4:00	-	7:00	p.m.
Oshkosh			
CESA			6
2300	State	Road	44
Large	Conference		Room
<b>October</b>		<b>4,</b>	<b>2007</b>
4:00	-	7:00	p.m.
Madison			
GEF			3
125	South	Webster	Building
Room 041			Street

**Analysis Prepared by Department of Public Instruction**

**Statutes interpreted**

Sections 115.76 (5) (a) 10. and (b), Stats.

**Statutory authority**

Sections 115.76 (5) (b) and 227.11 (2) (a), Stats.

**Related statute or rule**

Subchapter V of Chapter 115, Stats. Chapter PI 11, Wis. Admin. Code.

**Agency authority**

Section 115.762 (3) (a), Stats., requires the department to ensure that all children with disabilities are identified, located and evaluated.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it if the agency considers it necessary to effectuate the purpose of the statute.

**Federal regulation**

The proposed rules directly reflect the language under 34 CFR 300.307 to 300.311 as authorized under 20 U.S.C. 1221e-3, 1401 (30), and 1414 (b) (6).

**Surrounding states regulation**

Illinois, Iowa, Michigan, and Minnesota (as well as the remaining states) will be revising their law to comply with the federal language.

**Plain language analysis**

In 2004, the Individuals with Disabilities Education Act (IDEA) modified the evaluation procedures for the identification of children with specific learning disabilities (SLD) under 20 U.S.C. 1414 (b) (6). As specified in IDEA, the evaluation procedures relating to the identification of specific learning disabilities provide that: 1) States may not require the use of significant discrepancy as part of a determination of SLD, 2) States must permit the use of a process based on a child’s responses to scientifically-based intervention as part of its determination of a SLD, and 3) States may permit the use of other alternative research-based procedures to determine whether a child has a SLD. IDEA also added reading fluency skills as an area of identification for SLD. Because the department’s current rule under s. PI 11.36 (6), relating to specific learning disabilities is not consistent with the federal requirements, the rule will be modified to align with the U.S. Code. The proposed rules will allow a four-year period during which a school district “is permitted but not required to” continue to use the significant discrepancy formula in identifying children with SLD.

In addition, 20 U.S.C. 1401 (3), permits the identification of children with significant developmental delay (SDD) through the age of nine. The department’s current rule under s. PI 11.36 (11), relating to SDD permits identification only through the age of six. The proposed rule will extend the SDD age limit through the age of nine as authorized under federal law.

**Copy of Rule**

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the

proposed rule and the fiscal estimate also may be obtained by sending an e-mail request to [lori.slauson@dpi.state.wi.us](mailto:lori.slauson@dpi.state.wi.us) or by writing to:

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

### **Comments**

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than October 10, 2007, will be given the same consideration as testimony presented at the hearing.

### **Initial Regulatory Flexibility Analysis**

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

### **Fiscal Estimate**

The proposed rules modify eligibility criteria used to identify children with specific learning disabilities (SLD) to be consistent with federal requirements. The federal requirements focus more on early intervention services and do not want the use of “significant discrepancy” in determining whether a child has a SLD. This rule modification should not result in altering the size of the population of children identified as having a disability. Wisconsin must comply with federal requirements in order to remain eligible to receive more than \$200 million in federal IDEA funds.

The rules also permit the identification of a child with significant developmental delays (SDD) through the age of nine, rather than the age of six. Allowing a child with SDD to be identified through the age of nine will provide a longer window of time to assess whether the child has a specific disability, and thus, should not result in altering the size of the population of children identified as having a disability.

These rules are not expected to have a local or state fiscal effect.

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## Submittal of Proposed Rules to the Legislature

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

### **Natural Resources**

#### **(CR 07-011)**

Ch. NR 1, relating to contracting for timber sale services on state land and to the educational requirements for cooperating foresters.

### **Workforce Development**

#### **(CR 07-039)**

Ch. DWD 130, relating to wages for unemployment insurance benefit purposes.

### **Natural Resources**

#### **(CR 07-012)**

Ch. NR 1, relating to referral of private timber sale requests to cooperating foresters.

### **Natural Resources**

#### **(CR 07-014)**

Chs. NR 20 and 26, relating to fishing on the inland, outlying, and boundary waters of Wisconsin.

### **Natural Resources**

#### **(CR 07-024)**

Ch. NR 46, relating to administration of the forest crop law and managed forest law.

### **Workforce Development**

#### **(CR 07-019)**

Chs. DWD 80 and 81, relating to worker's compensation.

### **Workforce Development**

#### **(CR 07-030)**

Ch. DWD 56, relating to child care rates.

### **Workforce Development**

#### **(CR 07-038)**

Chs. DWD 111 and 123, relating to unemployment insurance benefit reports filed by employers.

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## Rule Orders Filed with the Revisor of Statutes Bureau

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*The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at [gary.poulson@legis.wisconsin.gov](mailto:gary.poulson@legis.wisconsin.gov) or (608) 266-7275 for updated information on the effective dates for the listed rule orders.*

### **Commerce**

#### **(CR 06-127)**

An order affecting ch. Comm 5, relating to credentials for storage of flammable, combustible, and hazardous liquids, and for cleanup of properties contaminated by petroleum-product discharges.

Effective 10-1-07.

### **Natural Resources**

#### **(CR 06-105)**

An order affecting ch. NR 22, relating to fishing on the boundary waters of Wisconsin and Iowa.

Effective 9-1-07.