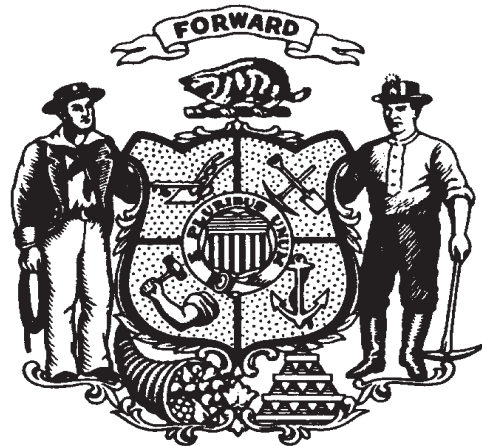


Wisconsin Administrative Register

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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

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

Exemption From Finding of Emergency

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

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

Commerce

Licenses, Certifications, etc., Ch. Comm 5

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

Exemption From Finding of Emergency

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

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

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

Commerce

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

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

Finding of Emergency

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

The facts constituting the emergency are as follows. Under sections 71.07 (3p) (b), 71.28 (3p) (b), and 71.47 (3p) (b) of the Statutes, as created in 2007 Wisconsin Act 20, a taxpayer may claim a dairy manufacturing facility investment credit for dairy manufacturing modernization or expansion during taxable years beginning after December 31, 2006. Sections 71.07 (3p) (a) 3., 71.28 (3p) (a) 3., and 71.47 (3p) (a) 3. of the Statutes define dairy manufacturing modernization or expansion as “constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for dairy manufacturing . . . if acquired and placed in service in this state during taxable years that begin after December 31, 2006, and before January 1, 2015.” Section 71.07 (3p) (c) 2m. a. of the Statutes states that the maximum amount of credits that may be claimed in fiscal year 2007–08 is \$600,000.

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

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

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

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

Corrections

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

Finding of Emergency

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

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

Second, the new law limits the use of the collected sex offender fees to partially offset the costs of monitoring sex offenders. Previously, the department was authorized to use

the collected fees to partially offset the costs of monitoring those persons on probation, parole, or extended supervision, regardless of whether they were required to register as sex offenders.

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

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

Publication Date: May 15, 2008
Effective Date: May 15, 2008
Expiration Date: October 12, 2008
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: June 20, 2008

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

Finding of Emergency

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

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

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

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

Finding of Emergency

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

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

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

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

Finding of Emergency

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

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

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

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 (3)
Family Supports, Chs. DWD 12 to 59

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

Finding of Emergency

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

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

Publication Date: December 27, 2007
Effective Date: January 1, 2008
Expiration Date: May 30, 2008
Hearing Date: March 10, 2008
Extension Through: July 29, 2008

2. **EmR0806** – Rule adopted amending s. **DWD 56.08 (1) and (2) (a), (e), and (f)** and repealing and recreating **Table DWD 56.08**, relating to child care copayments and affecting small businesses.

Finding of Emergency

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

The federal Department of Health and Human Services is requiring that Wisconsin eliminate different copayment amounts for families who receive child care services from a certified provider and families who receive child care services from a licensed provider. The change to the copayment

schedule must be implemented by April 1, 2008, or Wisconsin risks losing \$82 million annually from the Child Care Development Fund.

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

3. **EmR0814** – Rule adopted repealing EmR0807 affecting s. **DWD 56.04**, relating to child care enrollment underutilization.

Finding of Emergency

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

The Department implemented the child care enrollment underutilization emergency rule as a cost-saving measure effective March 30, 2008. 2007 Wisconsin Act 226 provides \$18.6 million to address the fiscal year 2007–08 Wisconsin Shares funding shortfall. The Governor’s veto message directs the Department of Workforce Development to “suspend the current attendance-based rule for the remainder of fiscal year 2007–08.” The Department is repealing the enrollment underutilization emergency rule and will be withdrawing the corresponding proposed permanent rule.

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

Scope Statements

Commerce

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

Subject

Creates Chapter Comm 123, relating to electronic medical records tax credits.

Objective of the Rule

The proposed rules would implement the provisions of 2007 Wisconsin Act 20 that relate to certifying health care providers and allocating to them tax credits for information technology hardware or software which is used to maintain medical records in electronic form.

Policy Analysis

The Department has rules for several other programs associated with tax credits, but none of those programs relate specifically to hardware or software that is used to maintain medical records in electronic form. The proposed rules are expected to address (1) the eligibility requirements for applicants; (2) the documentation that must be submitted by applicants to become certified as eligible for the tax credits, and to receive acceptance of incurred expenses; (3) the Department's response to the submitted documentation; and (4) use of the Department's response when filing a claim with the Department of Revenue for the corresponding tax credit. The alternative of not promulgating these rules would conflict with a directive in section 560.204 (4) of the Statutes, as created in 2007 Wisconsin Act 20, that requires this promulgation in consultation with the Department of Revenue.

Statutory Authority

Section 560.204 (4), as created in 2007 Wisconsin Act 20; and section 227.11 (2) (a), Stats.

Entities Affected by the Rule

The proposed rules may affect entities that have a role in maintaining medical records in electronic form.

Comparison with Federal Regulations

Neither the Department nor the Department of Revenue is aware of any existing or proposed federal regulation that addresses these tax credits.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rules is expected to range from 100 to 200 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Government Accountability Board

Subject

Creates Chapter GAB 22, relating to a settlement offer schedule to resolve violations by settlement between the

Government Accountability Board and a registrant or other party.

Objective of the Rule

Establish the settlement offer guidelines that the Government Accountability Board's staff will use to resolve violations of chapters 11, 13 and 19, Stats., in lieu of an enforcement action.

Policy Analysis

Most minor or less serious violations of chapters 11, 13 and 19 of the statutes, the campaign finance, lobbying and ethics chapters, including late registration, late filing of reports and exceeding contribution limits, are resolved by settlement between the offending registrant and the Government Accountability Board, pursuant to s. 5.05, Stats. The previous settlement offer schedule followed by the former Elections and Ethics Boards needs to be up-dated by its successor, the Government Accountability Board and needs to be codified by rule.

Statutory Authority

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

Entities Affected by the Rule

All persons and committees who register with the Government Accountability Board or with any other filing officer under Chapters 11, 13 and 19, Stats., and any other persons or committees who fail to comply with those chapters.

Comparison with Federal Regulations

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

No existing or proposed federal regulation, relating to lobbying or ethics is intended to address the activities to be regulated by the rule.

Estimate of Time Needed to Develop the Rule

At least 50 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.*

Health and Family Services

*Mgmt., Technology & Strategic Finance, Chs. HFS 1—
Community Services, Chs. HFS 30—
CR 08–057*

On June 9, 2008, the Department of Health and Family Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters HFS 1 and 90, relating to parental payment limits for early intervention services for children from birth to 3 with developmental delays or disabilities.

Agency Procedure for Promulgation

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

Contact Information

For substantive questions on rules contact:

Carol Noddings Eichinger
1 W. Wilson St., Rm. 418
P.O. Box 7851
Madison, WI 53707–7851
eichicn@dhfs.state.wi.us
(608) 267–3270

For small business considerations and rules processing information contact:

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

Insurance

CR 08–064

On June 13, 2008, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises sections Ins 6.79 and 8.10, relating to advisory councils and committees.

Agency Procedure for Promulgation

A public hearing is scheduled for July 21, 2008.

Contact Information

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264–8110. For additional information, please contact Julie E. Walsh at (608) 264–8101 or e-mail at julie.walsh@wisconsin.gov in the OCI Legal Unit.

Natural Resources

*Fish, Game, etc., Chs. NR 1—
CR 08–060*

On June 13, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter NR 25, relating to wholesale fish dealing and commercial fishing in outlying waters and affecting small business.

Agency Procedure for Promulgation

Public hearings will be held on July 16, 17, 30 and 31, 2008.

Contact Information

Tom Hansen
Administrative Warden, Northeast Region
Thomas.Hansen@wisconsin.gov

Natural Resources

*Fish, Game, etc., Chs. NR 1—
CR 08–061*

On June 13, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter NR 10, relating to 2008 migratory game bird seasons and waterfowl hunting zones.

Agency Procedure for Promulgation

Public hearings will be held on August 4, 5, 6 and 7, 2008.

Contact Information

Kent Van Horn
Bureau of Wildlife Management
Kent.VanHorn@wisconsin.gov

Natural Resources

*Fish, Game, etc., Chs. NR 1—
CR 08–062*

On June 13, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter NR 47, relating to the administration of the urban forestry catastrophic storm grant program.

Agency Procedure for Promulgation

A public hearing will be held on July 15, 2008.

Contact Information

Candice Sovinski
Bureau of Forest Management
Candice.Sovinski@wisconsin.gov

Natural Resources

Environmental Protection – General, Chs. NR 100— CR 08–063

On June 13, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters NR 190, 191, 195 and 198, relating to the aquatic invasive species prevention and control grants.

Agency Procedure for Promulgation

Public hearings will be held on July 22, 23, 29 and 30 and August 5, 2008.

Contact Information

Carroll Schaal
Bureau of Watershed Management
Carroll.Schaal@wisconsin.gov

Transportation

CR 08–058

On June 11, 2008, the Department of Transportation submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter Trans 263, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

Agency Procedure for Promulgation

The units responsible for promulgation of the proposed rule are: Division of Motor Vehicles, Bureau of Vehicle

Services; Division of Transportation System Development, Bureau of Highway Operations; and the Division of State Patrol, Motor Carrier Inspection Program. A public hearing is scheduled for July 30, 2008.

Contact Information

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

Workforce Development

Unemployment Insurance, Chs. DWD 100–150

CR 08–059

On June 12, 2008, the Department of Workforce Development submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter DWD 136, relating to wages exempt from unemployment insurance levy and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 22, 2008. The organizational unit responsible for the promulgation of the proposed rules is the DWD Unemployment Insurance Division.

Contact Information

Tracey Schwalbe
(608) 266–9641
tracey.schwalbe@dwd.state.wi.us

Rule-Making Notices

Notice of Hearings

Corrections

CR 08-045 – EmR0812

NOTICE IS HEREBY GIVEN that pursuant to sections 227.11 (2) and 301.45 (10), Stats., and interpreting ss. 301.45 (10), Stats., as amended by 2007 Wisconsin Act 20, section 3132, the Department of Corrections will hold public hearings to consider:

Emergency rule 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; and

Proposed permanent rule DOC 332.19, relating to the sex offender registration fee to bring the rule into compliance with s. 301.45 (10) as amended by 2007 Wisconsin Act 20, section 3132.

Hearing Information

Date and Time Location

July 24, 2008 Conference Room 116
10:00 a.m. State Office Building
819 North 6th Street
Milwaukee, Wisconsin

July 24, 2008 St. Croix Conference Room – First Floor
2:30 p.m. Department of Administration
101 East Wilson Street
Madison, Wisconsin

The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact Kathryn Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, email kathryn.anderson@wisconsin.gov, telephone (608) 240-5049 by July 17, 2008.

Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by July 31, 2008. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email kathryn.anderson@wisconsin.gov.

Agency Contact Person

Kathryn R. Anderson, Chief Legal Counsel, Wisconsin Department of Corrections, 3099 East Washington Avenue, P.O. Box 7925, Madison, WI 53707-7925, (608) 240-5049, kathryn.anderson@wisconsin.gov

Emergency Rule EmR0812

ORDER OF THE DEPARTMENT OF CORRECTIONS AMENDING RULES

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.

Objective of the Rule

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.

ORDER

Under the authority vested in the Department of Corrections by ss. 227.11 (2) and 301.45 (10), Stats., the Department of Corrections hereby amends the rule 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, as follows:

Statutory authority

Sections 227.11 (2) and 301.45 (10), Stats.

Statutes interpreted

Section 301.45 (10), Stats.

Plain language analysis

The purpose of the rule is to amend s. DOC 332.19 to be consistent with s. 301.45 (10), Stats., as amended by 2007 Wisconsin Act 20, section 3132. Specifically, the emergency rule expands the requirement to pay the sex offender registration fee to all persons who are required to register, not just those who are required to register and are under the custody or supervision of the Department of Corrections. In addition, the emergency rule applies the collected sex offender registration fees to partially offset the costs of monitoring those persons required to register as sex offenders under 301.45, Stats., instead of partially offsetting the cost of supervising persons on probation, parole, or extended supervision. Finally, the emergency rule increases the annual fee from \$50 to \$100.

Text of Emergency Rule

SECTION 1. Section DOC 332.19 (1) is amended to read:

DOC 332.19 (1) APPLICABILITY. A person who is required to register as a sex offender under s. 301.45, Stats., ~~and who is in the department's custody or who is on probation, parole, or extended supervision~~ shall be charged a registration fee to partially offset the costs of monitoring ~~offenders~~ registrants.

SECTION 2. Section DOC 332.19 (2) (c) is created to read:

(c) "Registrant" means a person required to register as a sex offender under s. 301.45, Stats.

SECTION 3. Section DOC 332.19 (3), DOC 332.19 (4) (a), (b), and (c), DOC 332.19 (5) (a) 3. and (b), and DOC 332.19 (6) (intro) are amended to read:

(3) FEE. The sex offender registration fee shall be ~~\$50.00~~ \$100.00 on an annual basis.

(4) RECORDING OF REGISTRATION FEE. (a) Record all registration fees paid by ~~an inmate or offender~~ a registrant.

(b) Provide the ~~inmate or offender~~ registrant access to a copy of the record of payments to verify receipt of payments.

(c) Advise the ~~inmate or offender~~ registrant of nonpayment of registration fees.

(5) COLLECTION OF REGISTRATION FEE. (a) 3. Provide the ~~inmate or offender~~ registrant with a copy of the sex offender registration fee payment procedures.

(b) The ~~inmate or offender~~ registrant shall pay the sex offender registration fee to the department according to the procedures established by the department.

(6) (intro) DEPARTMENT ACTION WHEN AN ~~INMATE OR OFFENDER~~ A REGISTRANT FAILS TO PAY REGISTRATION FEE. The department may use any of the following actions in any order when an ~~inmate or offender~~ a registrant fails to pay the sex offender registration fee:

Initial Regulatory Flexibility Analysis

The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.

Fiscal Estimate**Summary**

The emergency rule and related permanent rule proposal amend the administrative rule relating to the establishment of an annual sex offender registration fee from the current \$50/per offender to \$100/per offender, allows the Department to extend that fee to sex offenders who are no longer in the Department's custody or supervised by the Department, and allows the Department to use the revenue to pay expenses related to sex offenders who are no longer under the Department's supervision. Revenues will increase \$607,500 for 1 year billings, \$852,700 for 2nd year billings and \$908,100 for 3rd year billings. Expenses will increase \$60,600 for staff and mailing costs in FY9, \$52,500 in FY10 and \$53,000 in FY11.

A complete copy of the fiscal estimate is available upon request.

Clearinghouse Rule 08-045**WISCONSIN DEPARTMENT OF CORRECTIONS****PROPOSED RULE MAKING ORDER**

The Wisconsin Department of Corrections proposes an order to amend DOC 332.19, relating to the sex offender registration fee to bring the rule into compliance with s. 301.45 (10), Stats., as amended by 2007 WI Act 20, section 3132.

Statutory authority

Sections 227.11 (2) and 301.45 (10), Stats.

Statutes interpreted

Section 301.45 (10), Stats.

Plain language analysis

The purpose of the rule is to amend s. DOC 332.19 to be consistent with s. 301.45 (10), Stats., as amended by 2007 Wisconsin Act 20, section 3132. First, the newly amended s. 301.45 (10) 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. The proposed rule expands the requirement to pay the sex offender registration fee to all persons who are required to register.

Second, the amended s. 301.45 (10), Stats., 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. The proposed rule applies the collected sex offender registration fees to partially offset the costs of monitoring registrants.

Third, the legislature increased the maximum annual rate from \$50 to \$100. The proposed rule increases the annual fee to \$100.

Text of Permanent Rule

SECTION 1. Section DOC 332.19 (1) is amended to read:

(1) APPLICABILITY. A person who is required to register as a sex offender under s. 301.45, Stats., ~~and who is in the~~

department's custody or who is on probation, parole, or extended supervision shall be charged a registration fee to partially offset the costs of monitoring offenders registrants.

SECTION 2. Section DOC 332.19 (2) (c) is created to read:

(c) "Registrant" means a person required to register as a sex offender under s. 301.45, Stats.

SECTION 3. Sections DOC 332.19 (3), DOC 332.19 (4) (a), (b), and (c), DOC 332.19 (5) (a) 3. and (b), and DOC 332.19 (6) (intro) are amended to read:

(3) FEE. The sex offender registration fee shall be ~~\$50.00~~ \$100.00 on an annual basis.

(4) RECORDING OF REGISTRATION FEE. (a) Record all registration fees paid by ~~an inmate or offender~~ a registrant.

(b) Provide the ~~inmate or offender~~ registrant access to a copy of the record of payments to verify receipt of payments.

(c) Advise the ~~inmate or offender~~ registrant of nonpayment of registration fees.

(5) COLLECTION OF REGISTRATION FEE. (a) 3. Provide the ~~inmate or offender~~ registrant with a copy of the sex offender registration fee payment procedures.

(b) The ~~inmate or offender~~ registrant shall pay the sex offender registration fee to the department according to the procedures established by the department.

(6) (intro) DEPARTMENT ACTION WHEN AN ~~INMATE OR OFFENDER~~ A REGISTRANT FAILS TO PAY REGISTRATION FEE. The department may use any of the following actions in any order when an ~~inmate or offender~~ a registrant fails to pay the sex offender registration fee:

Initial Regulatory Flexibility Analysis

The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.

Fiscal Estimate

Summary

The emergency rule and related permanent rule proposal amend the administrative rule relating to the establishment of an annual sex offender registration fee from the current \$50/per offender to \$100/per offender, allows the Department to extend that fee to sex offenders who are no longer in the Department's custody or supervised by the Department, and allows the Department to use the revenue to pay expenses related to sex offenders who are no longer under the Department's supervision. Revenues will increase \$607,500 for 1 year billings, \$852,700 for 2nd year billings and \$908,100 for 3rd year billings. Expenses will increase \$60,600 for staff and mailing costs in FY9, \$52,500 in FY10 and \$53,000 in FY11.

A complete copy of the fiscal estimate is available upon request.

Notice of Hearing

Insurance CR 08-064

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of a proposed rulemaking order

affecting Sections Ins 6.79 and 8.10, Wis. Adm. Code, relating to advisory councils and committees.

Hearing Information

Date: July 21, 2008

Time: 10:00 a.m., or as soon thereafter as the matter may be reached

Place: OCI, Room 227, 2nd Floor
125 South Webster Street, Madison, WI

Submission of Written Comments

Written comments can be mailed to:

Julie E. Walsh
Legal Unit – OCI Rule Comment for Rule Ins 679
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh
Legal Unit – OCI Rule Comment for Rule Ins 679
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Comments can be emailed to:

Julie E. Walsh
julie.walsh@wisconsin.gov

Comments submitted through the Wis. Administrative Rule web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 10th day after the date for the hearing stated in this Notice of Hearing.

Copies of Proposed Rule and Agency Contact Persons

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

Phone: (608) 264-8110
Email: inger.williams@wisconsin.gov
Address: 125 South Webster St – 2nd Floor,
Madison WI 53703-3474
Mail: PO Box 7873, Madison, WI 53707-7873

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

Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

Statutes interpreted

Sections 15.04, 15.09 and 601.20, Stats.

Statutory authority

Section 601.20, Stats.

Explanation of agency authority

The OCI is specifically granted authority to create advisory councils and committees and permits the OCI to establish by rule the creation, governance, duties and termination of any council or committee that the commissioner establishes.

Related statutes or rules

The topics addressed by the OCI's committees and councils are not duplicative of other state efforts.

Plain language analysis

The proposed rule implements s. 601.20, Stats., and establishes the structure, governance, duties and termination of councils or committees that the commissioner determines will be of assistance to the Office in carrying out its duty of regulation. The proposed rule repeals s. Ins 8.10, Wis. Adm. Code, as that council no longer functions. Section Ins 6.79, Wis. Adm. Code, is repealed and recreated to more specifically define the structure of advisory councils and committees including duties, meetings, membership, officers and term of the council or committee. Although the listing of specific councils is repealed, the commissioner has continued to utilize councils and committees that focus on topics of life, health and property and casualty insurance issues. The proposed rule provides the structure to continue existing councils and committees and to establish new committees or councils with a focus and composition reflecting the subjects that are being considered by the agency when needed.

Comparison with federal regulations

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

Comparison of rules in adjacent states

Illinois: No similar rule, although the Illinois Department of Financial and Professional Regulation is required to use advisory boards or councils for very specific topics. For example, the Illinois Department is authorized to convene an advisory committee for providing counsel and gathering clinical advice relating to mandated dental care issues. (See., 50 IL Admin Code 5425.40.) However, Illinois does not have a regulation similar to what is being proposed.

Iowa: No similar rules or laws.

Michigan: No similar rules or laws

Minnesota: No similar rules or laws.

Summary of factual data and analytical methodologies

No data analyzed as this addresses the role of advisory councils and committees and not specific regulatory oversight or actions of the Office.

Analysis and supporting documentation used to determine effect on small businesses

The proposed rule is simply to describe the structure of advisory councils or committees, not specific regulatory action so there is no effect on small businesses.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate**State fiscal effect**

None

Local fiscal effect

None

Private sector fiscal effect

The rule change will have no effect on the private sector regulated by OCI.

Long-range fiscal implications

None

Notice of Hearing
Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 08-060

NOTICE IS HEREBY GIVEN that the Department of Natural Resources will hold public hearings on revisions to Chapter NR 25, Wis. Adm. Code, relating to wholesale fish dealing and commercial fishing in outlying waters and affecting small business.

Hearing Information

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

| | |
|--|--|
| July 16, 2008 Wednesday at 5:00 p.m. | Garland Room Vaughn Public Library 502 West Main Street Ashland |
| July 17, 2008 Thursday at 4:00 p.m. | Room B19, DNR Service Center 3550 Mormon Coulee Road La Crosse |
| July 30, 2008 Wednesday at 10:30 a.m. | Room 104 – DNR Southeast Region Hdqrs., 2300 N. Dr. Martin Luther King, Jr. Drive Milwaukee |
| July 30, 2008 Wednesday at 3:00 p.m. | Wells Fargo Room Lakeshore Technical College 1290 North Avenue Cleveland |
| July 31, 2008 Thursday at 10:00 a.m. | Council Chambers Peshtigo City Hall 331 French St. (Hwy 41) Peshtigo |
| July 31, 2008 Thursday at 1:30 p.m. | Lake Michigan Room DNR Northeast Region Hdqrs., 2984 Shawano Avenue Green Bay |
| July 31, 2008 Thursday at 5:30 p.m. | Sturgeon Bay Library 107 South 4 th Avenue Sturgeon Bay |

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Tom Hansen at (920) 662-5438 with specific information on your request at least 10 days before the date of the scheduled hearing.

Submission of Written Comments, Agency Contact and Copies of Proposed Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Tom Hansen, Administrative Warden, DNR Northeast Region, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 10, 2008. Written comments whether submitted electronically or by U.S. mail will have the same

weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Hansen.

Analysis Prepared by the Department of Natural Resources

Statutory authority

Sections 29.014(1), 29.041, 29.503 (4) (b) and (e), 29.519 (1m) (b) and (c), (2) (d) and (5), 29.973 and 227.11 (2) (a), Stats.

Statutes interpreted

Sections 29.014 (1), 29.041, 29.503, 29.516, 29.519 and 29.973, Stats.

Plain language summary

The proposed rules complete the implementation of the statutory requirements of 2003 Wisconsin Act 288 and recommendations of the Great Lakes Fishing Task Force. The proposed changes include:

1. *Electronic fish harvest reporting system.* The rule creates the electronic fish harvest reporting system (EFHRS) and related procedures to replace the current biweekly “paper” reporting system for recording and reporting all elements of the Great Lakes commercial catch.

2. *Fleet reporting system.* The rule will allow an individual to hold multiple commercial fishing licenses in his or her own name, and creates a fleet reporting program whereby a person holding multiple commercial fishing licenses on Lake Superior or Lake Michigan can consolidate the quotas under these licenses and permits for reporting purposes. It establishes the individual species harvest limits for a commercial fisher with multiple licenses engaged in fleet reporting as being the sum total of that person’s quotas held under the individual licenses. The rule requires the licensee to mark all commercial fishing nets with a common “fleet reporting number” in place of the individual license numbers, and authorizes the licensee’s crew members to operate all the commercial fishing gear and vessels included under the fleet reporting number without obtaining additional crew cards for each license included in the licensee’s fleet. The rule clarifies the number of nets allowed and specifies that all nets in the water bearing a license number or fleet reporting number shall count toward the maximum number of nets allowed whether or not the net is actively fishing.

3. *Records and reporting.* Commercial fishers will no longer be required to complete and submit biweekly catch and disposition (sales) records to the Department. The rule implements an annual inventory report for both commercial fishers and wholesale fish dealers. It creates a float plan requirement for fishing “high value” species (whitefish for commercial fishers holding quotas less than 13,656 pounds and yellow perch). This rule creates float plan and enhanced reporting requirements for individuals previously convicted of specific commercial fishing violations. The rule makes it illegal to possess, control, transport or cause to be transported any fish for which a record has not been created or submitted as required.

4. *Elimination of tagging of foreign (imported) lake trout.* This rule repeals the provisions associated with the foreign lake trout tagging program while continuing to require commercial fishers to tag domestic lake trout.

5. *Roe harvest.* The rule requires commercial fishers to land and report all fish from which eggs are harvested, and limits the quantity of roe landed to a weight percentage of the fish landed.

6. *License transfers.* The rule eliminates certain license transfer criteria for transfer to immediate family members and persons holding non-temporary crew cards.

7. *Commercial fishing nets on Lake Superior; other net and boat use restrictions.* The rule creates a permit authorization by which the Department can allow the legal placement open water nets during the winter months on Lake Superior. The rule also creates a requirement for all Great Lakes commercial fishers to notify a Conservation Warden of any lost or recovered commercial fishing net. The rule prohibits anyone from lifting, tampering or disturbing commercial fishing gear without the permission of the owner. Also, state commercial fishing licensees and their crew members are prohibited from operating a boat used by the licensee in commercial fishing under ch. NR 25 if there are any lake trout tags on board that were not issued by the department to a state licensed commercial fisher. Finally, the rule prohibits a state licensed commercial fisher from allowing his or her licensed boats to be used to tend nets that were not set by a state licensed commercial fisher, and from allowing his or her licensed nets to be used by a person who is not a state licensed commercial fisher or crew member.

8. *Ports of landing.* The rule designates primary and secondary ports of landing for commercial fishers on Lake Superior, Lake Michigan and Green Bay. Commercial fishers are required to call in a daily float plan to the Department if they intend to land their catch at a secondary port.

9. *Vehicle identification.* The rule creates vehicle identification requirements for transportation of fish in vehicles belonging to commercial fishers and wholesale fish dealers.

10. *Housekeeping provisions.* The rule includes several housekeeping provisions updating language and terms, clarifying provisions on the use of gear, and identifying the specific locations of particular lines and boundaries.

Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

Types of small businesses affected

Commercial fishers and wholesale fish dealers

Description of reporting and bookkeeping procedures required

The current biweekly “paper” reporting system for daily fishing activity is replaced with an electronic fish harvest reporting system whereby commercial fishers submit electronic reports and data relating to fishing activity and reports on a daily basis via the Internet. The Department will provide the portable electronic reporting unit to the commercial fishers. A fleet reporting system is created to allow family commercial fishing businesses to consolidate quota allocations, fish harvest weights and daily fishing activity information for reporting purposes, thereby eliminating extensive record keeping requirements relating to individual licenses. The completion and submittal of a biweekly catch and disposition report to the Department is eliminated for commercial fishers. Commercial fishers and wholesale fish dealers will be required to submit a new annual inventory report documenting fish in possession, storage or under control on an annual date of their choosing to allow them to use the same inventory data as required for tax reporting or other business purposes. The required inspection and tagging of foreign lake trout imported by wholesale fish dealers is eliminated.

Description of professional skills required

No new professional skills are required.

Environmental Analysis

The Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Fiscal Estimate**Summary**

This rule streamlines Great Lakes commercial fish reporting processes by implementing a fleet reporting system and a Department-managed electronic fish harvest reporting system (EFHRS). Both of these new systems for managing required data and reports will increase the efficiencies of Department staff (Fisheries and LE) by eliminating the need to enter commercial fishing data and the related handling and filing of the current biweekly commercial fishing daily activity reports. Fisheries and LE staff will be able to directly access daily fishing activity data electronically through EFHRS, thereby allowing timely and efficient analysis of data for ensuring compliance and protection to the Great Lakes fishery resource. It is very difficult to quantify the labor cost savings/significance of these two new systems, as the increased efficiencies will allow affected Department staff to redirect their activities to other required tasks and pressing issues.

Complete implementation of EFHRS in 2010 will eliminate the need for the Department to print and distribute the paper biweekly daily fishing activity report to individual commercial fishers, which will reduce Department printing and mailing costs by approximately \$500 per year. It is estimated that EFHRS will cost approximately \$15,000 to establish and \$2,700 annually to maintain.

Fleet reporting benefits both the Department and the commercial fishing industry by allowing family commercial fishing businesses to consolidate individual fish harvest quotas into a single reporting entity. This significantly reduces paper work for the commercial fishers and the number of reports and associated data for DNR Fisheries staff to manage.

State fiscal effect

Indeterminate

Local fiscal effect

None

Fund sources affected

SEG

Affected chapter 20 appropriations

Section 20.370 (3) (mi), (mu) and (4) (kr)

Notice of Hearing**Natural Resources**

Fish, Game, etc., Chs. NR 1—

CR 08-061

NOTICE IS HEREBY GIVEN that the Department of Natural Resources will hold public hearings on revisions to

Chapter NR 10, Wis. Adm. Code, relating to the 2008 migratory game bird seasons and waterfowl hunting zones.

Hearing Information

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

August 4, 2008 Rooms B-19 and B-20
Monday State Office Building
at 7:00 p.m. 3550 Mormon Coulee Road
La Crosse

August 5, 2008 Room 241, WI Indianhead Tech College
Tuesday 1900 College Drive
at 7:00 p.m. Rice Lake

August 6, 2008 Main Conference Room
Wednesday Agricultural Services Center
at 7:00 p.m. 3369 W. Brewster Street
Appleton

August 7, 2008 Trecker Lodge
Thursday Kettle Moraine State Forest—
at 7:00 p.m. Lapham Peak Unit
W329, N845 County C
Delafield

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kent Van Horn at (608) 266-8841 with specific information on your request at least 10 days before the date of the scheduled hearing.

Submission of Written Comments, Agency Contact and Copies of Proposed Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Kent Van Horn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 7, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Van Horn.

Analysis Prepared by the Department of Natural Resources**Statutory authority**

Sections 29.014, 29.041, 29.197 and 227.11 (2) (a), Stats.

Statutes interpreted

Sections 29.014, 29.041 and 29.885, Stats.

Plain language summary

Season dates and bag limits will be set for ducks and Canada geese. Under international treaty and federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service regulatory process. Because of the timing of Wisconsin's rule process and the U.S. Fish and Wildlife Service rule process, the actual season lengths, dates and bag limits cannot be determined at this time for much of the rule. The daily bag limit for ducks is expected to be 6 ducks including not more than 4 mallards, of which only one may be a hen, one black duck, one pintail, 2 canvasbacks, 2 wood ducks, 2 redheads and 2 scaup. Season lengths for Canada geese are expected to be: Collins Zone – 67 days; Horicon Zone – 92 days; Exterior Zone – 85 days; and Mississippi River Subzone – 85 days.

The proposed rule also reduces the number of time periods for Canada goose hunting in the Horicon Zone from 4 time periods to 2 time periods. The rule also proposes an addition of 10 days to the mourning dove hunting season which is consistent with the anticipated federal season framework that will be offered this year. The additional 10 days would be added on to the end of our existing 60-day season which runs from September 1 to October 30.

Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

Environmental Analysis

The Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Fiscal Estimate

Summary

The proposed changes will not result in any significant changes in spending or revenue. There are no government costs anticipated due to the provision of this rule.

State fiscal effect

None

Local fiscal effect

None

Long-range fiscal implications

None

Notice of Hearing Natural Resources

*Fish, Game, etc., Chs. NR 1—
CR 08-062*

NOTICE IS HEREBY GIVEN that the Department of Natural Resources will hold a public hearing on amendments to sections NR 47.007 (1) and 47.008 (1) and the creation of subch. XII of chapter NR 47, Wis. Adm. Code, relating to the administration of the urban forestry catastrophic storm grant program.

Hearing Information

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

| | |
|----------------------|---------------------------|
| July 15, 2008 | Room G09 |
| Tuesday | DNR State Office Building |
| at 10:30 a.m. | 101 South Webster Street |
| | Madison |

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Candice Sovinski at (608) 267-3775 with specific

information on your request at least 10 days before the date of the scheduled hearing.

Submission of Written Comments, Agency Contact and Copies of Proposed Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet sites: <http://adminrules.wisconsin.gov> or <http://dnr.wi.gov/org/legal/adminrules.html>. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Candice Sovinski, Bureau of Forest Management, P.O. Box 7921, Madison, WI 53707 or submitted by fax to (608) 266-8576. Comments may be submitted until July 22, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearing. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Sovinski.

Analysis Prepared by the Department of Natural Resources

Statutory authority

Sections 23.097 (1r) and 227.11 (2) (a), Stats.

Statutes interpreted

Section 23.097 (1r), Stats.

Plain language summary

2007 Wisconsin Act 13 gives the department the authority to provide urban forestry grants to meet communities' needs for repair, removal and replacement of trees following a catastrophic storm event for which the Governor has designated a state of emergency. Act 13 allows for a portion of the current urban forestry grant appropriation be used to fund no-match catastrophic storm grants in an expedited manner for Governor-declared disasters in urban or developed areas of the state.

To accomplish this, the proposed rule will update the general provisions section on grant termination and enforcement and create a new subchapter for the urban forestry catastrophic storm grants which will establish eligibility, application procedures, eligible costs for payment, the grant selection process and the required supporting documentation for the urban forestry catastrophic grant program.

Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

Environmental Analysis

The Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Fiscal Estimate

Summary

The Department of Natural Resources (DNR) administers a grant program under which counties, cities, villages, towns,

tribal governments and nonprofit organizations receive grants of up to 50 percent of the cost for projects relating to tree management such as development of management plans, ordinances, and tree inventories. 2007 Act 13 authorized the DNR to award grants to any of the aforementioned entities for the costs of removing, repairing, or replacing trees damaged in a catastrophic storm event in an urban area for which the governor has declared a state of emergency. 2007 Act 13 allows the department to provide grants covering 100% of the costs for this purpose.

Assumptions

Since 1990, there has been, on average, one storm annually where the Governor has designated a state of emergency for an area. The Department estimated that grants totalling as much as \$106,000, or up to 20% of the total current appropriation for urban forestry grants, and up to \$50,000 each, would be made available annually to local governments, tribes and nonprofit organizations in communities suffering a storm event that leads to a declaration of emergency by the Governor. Funding for the proposed grants will come from the existing funding appropriated for the urban forestry grant program, which is currently approximately \$529,900 annually.

State fiscal effect

Increase in costs that may be possible to absorb within agency's budget.

Local fiscal effect

No local government costs. Increase revenues – permissive.

Types of local governmental units affected

Towns, villages, cities, counties, tribes, NCOs

Fund sources affected

SEG

Affected chapter 20 appropriations

Section 20.370 (1) (mv) and (5) (bw), Stats.

Long-range fiscal implications

It is difficult to predict the future demand for urban forestry catastrophic storm grants. However, should the demand for these grants be high, the repetitive diversion of funds would decrease the number of urban forestry grants to communities by 20%, or an estimated 8 to 10 grants each year.

Notice of Hearing

Natural Resources

Environmental Protection – General, Chs. NR 100— CR 08–063

NOTICE IS HEREBY GIVEN that the Department of Natural Resources will hold public hearings on revisions to Chapters NR 190, 191, 195 and 198, Wis. Adm. Code, relating to aquatic invasive species prevention and control grants.

Hearing Information

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

| | |
|----------------------|--------------------------------|
| July 22, 2008 | Conference Room |
| Tuesday | DNR West Central Region Hdqrs. |
| at 7:00 p.m. | 1300 W. Clairemont |
| | Eau Claire |

| | |
|----------------------|----------------------------|
| July 23, 2008 | Conference Room |
| Wednesday | DNR Northern Region Hdqrs. |
| at 7:00 p.m. | 810 W. Maple Street |
| | Spooner |

| | |
|----------------------|----------------------------|
| July 29, 2008 | Conference Room |
| Tuesday | DNR Northern Region Hdqrs. |
| at 7:00 p.m. | 107 Sutliff Avenue |
| | Rhineland |

| | |
|----------------------|---------------------------------|
| July 30, 2008 | Conference Room |
| Wednesday | DNR Service Center |
| at 7:00 p.m. | 625 E. County Road Y, Suite 700 |
| | Oshkosh |

| | |
|-----------------------|--------------------------|
| August 5, 2008 | Conference Room |
| Tuesday | Watertown Public Library |
| at 6:00 p.m. | 100 S. Water Street |
| | Watertown |

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Carroll Schaal at (608) 261-6423 with specific information on your request at least 10 days before the date of the scheduled hearing.

Submission of Written Comments, Agency Contact and Copies of Proposed Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Carroll Schaal, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 29, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Schaal.

Analysis Prepared by the Department of Natural Resources

Statutory authority

Sections 23.22 (2) (c), 281.68, 281.69, 281.70 and 227.11 (2) (a), Stats.

Statutes interpreted

Sections 23.22 (2) (c), 23.24, 281.68, 281.69 and 281.70, Stats.

Plain language summary

In 2004, the Department promulgated ch. NR 198 for a cost share program for assisting public and private entities in controlling aquatic invasive species. 2007 Wisconsin Act 20 increased the cost share rates, removed priority for local government sponsors and increased the allocation of \$2.8 million annually. The proposed revisions to ch. NR 198 incorporate the new statutes and make additional changes that include larger maximum grant awards, an expanded list of potential sponsors, create incentives and priorities for projects that integrate aquatic invasive species control with other environmental protections and allows communities that are successfully and compliantly managing existing populations of aquatic invasive species to recoup their aquatic plant management permit fees.

Additional changes that increase the value of donated labor, used for local match, from \$8 to \$12 and require

application materials to be submitted in electronic format in ch. NR 198 are also proposed for the closely related lake and river grant programs in chs. NR 190, 191 and 195 for needed uniformity.

Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

Environmental Analysis

The Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Fiscal Estimate

Summary

The proposed rule makes changes to the aquatic invasive species (AIS) grants program as a result of changes that were included in 2007 Act 20, the 2007-09 biennial budget act. The changes in the package include the following:

1. Increasing the cap on the state cost-share rate from 50% to 75%.
2. Deleting a requirement that grants be awarded to local units of government.
3. Increasing the maximum amount of dollars (i.e. grant cap) that can be awarded for a grant.
4. Increasing the value for volunteer labor that can be used as local match and require electronic applications. (These changes are proposed for NR 190 Lake Management Planning, NR 191 Lake Protection and Classification Grants, and NR 195 River Protection Grants, too).
5. Establishing a new category of AIS grants that reimburses grantees for maintenance costs that are incurred while managing established infestations of aquatic invasive species, and a new category describing how research and demonstration projects can be developed and proposed.
6. Allowing a cash advance for early detection and rapid response projects.
7. Expanding sponsorship to include universities, colleges and technical schools, hydro-electric corporations and other branches of state and federal government that manage lands or natural resources.
8. Broadening the definition of a nonprofit conservation organization (NCO).
9. Adding priorities and incentives for projects that integrate with pollution control, habitat protection and that use a bidding process to develop their budget.

State fiscal effect

Increase in costs that may be possible to absorb within agency's budget.

Although a rule change is required, item 1 above has already been implemented by the Department because the change has already been made in statute by Act 20. Items 2 through 9 above are expected to generate additional demand for AIS grants by an amount that cannot be specifically

estimated. In addition, since Act 20 did not provide additional staff or funding for administering the AIS grant program, the costs associated with handling the additional demand for AIS grants will be absorbed with existing staff and within the existing budget.

Local fiscal effect

Increase revenues – permissive.

The rule makes it easier for local units of government to leverage grant funds and thus provides a greater financial incentive for local units to apply for grants.

Types of local governmental units affected

Towns, villages, cities, counties, lake districts, school districts

Fund sources affected

SEG

Affected chapter 20 appropriations

Section 20.370 (6) (as), Stats.

Notice of Hearing Occupational Therapists Affiliated Credentialing Board CR 08-050

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Occupational Therapists Affiliated Credentialing Board in ss. 15.085 (5) (b), 227.11 (2) and 448.965 (2), Stats., and interpreting s. 448.96 (4) and (6), Stats, the Occupational Therapists Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to renumber and amend section OT 4.04 (4); and to create sections OT 1.02 (3m) and 4.04 (4) (b), relating to occupational therapist supervision of occupational therapy assistants.

Hearing Information

Date: July 15, 2008

Time: 9:30 A.M.

Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 121A
Madison, Wisconsin

Appearances at Hearing and Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to pamela.haack@drl.state.wi.us. Comments must be received on or before July 17, 2008, to be included in the record of rule-making proceedings.

Agency Contact Person

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

Analysis Prepared by the Department of Regulation and Licensing

Statutes interpreted

Section 448.96 (4) and (6), Stats.

Statutory authority

Sections 15.085 (5) (b), 227.11 (2) and 448.965 (2), Stats.

Explanation of agency authority

The Occupational Therapists Affiliated Credentialing Board has the authority to promulgate rules under s. 448.965, Stats., that define the scope of practice of occupational therapy or the scope of practice of assisting in the practice of occupational therapy.

Related statutes or rule

There are no other statutes or rules other than those listed above.

Plain language analysis

Section OT 4.04 (4) is being modified to address the frequency of contacts that an occupational therapist must have with an occupational therapy assistant. In so doing, the board intends to add a greater measure of flexibility for these licensees since the existing provisions were often found to be burdensome to implement. Furthermore, a new provision is being added to define “direct contact” between an occupational therapist and an occupational therapy assistant.

SECTION 1 creates a definition of “direct contact” between an occupational therapist and an occupational therapy assistant. Communication between the two may be face-to-face, by telephone, electronic communication, or group communication.

SECTION 2 amends the frequency of direct contacts that an occupational therapist (OT) must have with an occupational therapy assistant (OTA). Under this proposal, the required contact between the OT and OTA must be a minimum of once a calendar month or every tenth session of occupational therapy, whichever is sooner. The contacts need not be held during a treatment session, nor must the meetings be held simultaneously with the OT, OTA, and client. The rule identifies that the purpose of the meetings is to review the progress and effectiveness of treatment.

SECTION 3 requires the occupational therapist to document supervisory activities, including the client’s name, status, and plan.

Comparison with federal regulations

There is no existing or proposed federal regulation for summary and comparison.

Comparison with rules in adjacent states

Iowa: Occupational therapists must provide direct, on-site and in-sight supervision for a minimum of four (4) hours per month to occupational therapy assistants. They must also identify in the treatment plan what has specifically been delegated to the occupational therapy assistant.

Websites: <http://www2.legis.state.ia.us/Rules/Current/iac/645iac/645206/645206.pdf>

<http://www2.legis.state.ia.us/rules/Current/iac/645iac/645208/645208.pdf>

Illinois: Supervision is required of occupational therapy assistants depending upon the varying patterns as determined by the demands of the areas of patient/client service and the competency of the individual assistant. The supervision is structured according to the assistant’s qualifications, position, level of preparation, depth of experience and the environment within which he/she functions. However, there are minimal supervisory requirements. For instance, for an occupational therapy assistant who has less than one year of work experience, a minimum of 5% on-site, face-to-face supervision per month by an occupational therapist is required.

Website: <http://www.ilga.gov/commission/jcar/admincode/068/068013150001630R.html>

Michigan: Michigan does not appear to have any specific rules governing the supervisory requirements for occupational therapy assistants. Their rules appear to be limited to obtaining a credential.

Website: http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Department&Dpt=CH&Level_1=Bureau+of+Health+Professions

Minnesota: Minnesota requires face-to-face collaboration between an occupational therapist and an occupational therapy assistant every two weeks, at a minimum. Face-to-face collaboration is required more frequently if necessary to execute a patient’s care.

Website: <http://www.health.state.mn.us/divs/hpsc/hop/otp/ms148640.pdf>

Summary of factual data and analytical methodologies:

The board reviewed comments from occupational therapy professionals and held discussions during open session of its meetings regarding the impact of current supervision rules on the provision of care.

Analysis and supporting documents used to determine effect on small business

No significant impact on small businesses is anticipated. There are no additional compliance or paperwork requirements.

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

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate**Summary**

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

Anticipated costs incurred by private sector

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

Text of Proposed Rule

SECTION 1. OT 1.02 (3m) is created to read:

(3m) “Direct contact” means an occupational therapist shall communicate with an occupational therapy assistant face-to-face, or by telephone, electronic communication, or group conferences.

SECTION 2. OT 4.04 (4) is renumbered OT 4.04 (4) (a) and is amended to read:

(4) (a) When general supervision is allowed, the supervising occupational therapist shall have direct contact ~~on the premises~~ with the occupational therapy assistant and ~~face-to face contact with~~ the client ~~at least once every 2 weeks.~~ ~~In the interim between direct contacts, the occupational therapist shall maintain contact with the occupational therapy assistant by telephone, written reports and group conferences.~~ The occupational therapist shall record in writing a specific description of the supervisory

activities undertaken for each occupational therapy assistant. The written record shall include client name, status and plan for each client discussed a minimum of one time per calendar month or after the tenth session of occupational therapy, whichever is sooner. The direct contact meetings with the occupational therapy assistant may be held simultaneously or separately from the face-to-face client meetings. These meetings do not need to be held at or during a treatment session, but are intended to review the progress and effectiveness of treatment.

SECTION 3. OT 4.04 (4) (b) is created to read:

(b) The occupational therapist shall record in writing a specific description of the supervisory activities undertaken for each occupational therapy assistant. The written record shall include client name, status and plan for each client discussed.

Notice of Hearing Pharmacy Examining Board EmR0815

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board, the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order adopting emergency rules to repeal sections Phar 13.02 (11) (b) to (e), 13.03, 13.04 and 13.06 (3); to renumber section Phar 13.02 (11) (f); to renumber and amend section Phar 13.02 (6); to amend sections Phar 13.02 (8), (9), (11) (intro.) and (a), 13.05 (2), 13.08, 13.09 (intro.) and (3), 13.10 (3), 13.11 (1) to (4), 13.12 (1) to (3), 13.13 (title) and (1) to (4), 13.14 (1) (intro.), (a) to (c), and (2), 13.15 (4), 13.16 and 13.17 (1); and to create sections Phar 13.02 (3m), (11) (b) to (d), (f) to (m) and 13.055, relating to the regulation of wholesale prescription drug distributors.

Hearing Information

Date: July 23, 2008
Time: 9:45 a.m.
Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 121A
Madison, Wisconsin

Appearances at Hearing and Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708 or by email at pamela.haack@drl.state.wi.us. Written comments must be received by July 25, 2008, to be included in the record of rule-making proceedings.

Agency Contact Person

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

Analysis prepared by the Department of Regulation and Licensing.

Statutes interpreted

Sections 450.02 (3), 450.07 (4) (c), 450.071 (3) (b) and 450.073 (3), Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 450.02 (3), 450.07 (4) (c), 450.071 (3) (b) and 450.073 (3), Stats.

Explanation of agency authority

The Wisconsin Pharmacy Examining Board has authority under ch. 450, Stats., as amended by 2007 Wisconsin Act 20, to promulgate rules for the regulation of wholesale prescription drug distributors.

Related statutes or rules

Ch. 961, Stats., 21 CFR s. 203.50.

Plain language analysis

This emergency rule implements the statutory changes set forth in the drug distributor portions of 2007 Wisconsin Act 20. Several key areas are addressed by this emergency rule including, newly required enhanced qualifications for distributor licensing, inspection requirements, identification and qualification of a designated representative, bonding requirements and additional recordkeeping requirements including where appropriate, the maintaining of drug distribution pedigrees.

SECTION 1 requires a licensed manufacturer to maintain and update at least once per month a list of the manufacturer's authorized distributors of record.

SECTION 2 defines "department."

SECTION 3 amends the definition of "wholesale distributor."

SECTION 4 amends the definitions of "facility" and "manufacturer."

SECTION 5 amends the definition of "wholesale distribution."

SECTION 6 repeals portions of the definition of "wholesale distribution" which are no longer applicable.

SECTION 7 amends the definition of "wholesale distribution."

SECTION 8 renumbers and SECTION 9 creates additional provisions for the definition of "wholesale distribution."

SECTION 10 repeals two licensure provisions no longer statutorily required.

SECTION 11 amends a licensure requirement to require proof of an inspection.

SECTION 12 creates a licensure requirement to require a surety bond or irrevocable letter of credit to be filed with the department.

SECTION 13 repeals a requirement that is not statutorily required.

SECTIONS 14 to 19 remove the reference to "devices."

SECTION 20 amends a recordkeeping requirement.

SECTION 21 amends a recordkeeping requirement.

SECTION 22 adds "designated representative" to the list of required responsible persons.

SECTION 23 amends compliance with federal, state and local laws to include the requirement of an electronic track and trace drug pedigree under certain conditions.

Comparison with federal regulations

21 CFR § 203 included federal regulations relating to drug distributorships and drug pedigrees. Only portions of the enacted regulations could be applied after a preliminary

injunction that stayed certain provisions was ordered on December 5, 2006 in RXUSA Wholesalers, Inc. v. HHS.

Comparison with rules in adjacent states

Minnesota:

Statutes: Ch. 151 – Each separate facility is required to be licensed (with an annual renewal) and must satisfy a number of conditions relating to storage, security, container labeling, records retention (must be separately maintained and available for inspection within 2 working days of a board request), management and ownership, inspection procedures. An annual report to the board is required. The board may adopt reciprocity rules if the other state has comparable legal standards and that state would also extend reciprocal treatment.

Rules: § 6800 – 1400 – Distributors must track the source of all drugs, along with the name and address of the seller or transferor and the address of the location from where the shipment was sent. Records must be kept for two years, and lists of responsible persons must be maintained with a description of duties and qualifications.

Iowa:

Rules: § 657 – An annual renewal is required. Board inspectors inspect new distribution locations in Iowa. Minimum qualifications are specified in rule. Lists of officers, directors, managers and others in charge must be maintained. Distributors must verify the authority of the person or business to whom the distribution is intended prior to distribution. If distribution is to sales or manufacturers' representatives, distributors must ensure they maintain distribution records. There are facility, security, storage and record-keeping requirements included. Transaction records must include the source of the drug, name and address of seller/transferor, and the address from where it is shipped, in addition to the recipient, the name and address of the purchaser or transferee and the address where drugs are shipped. Records must be maintained for two years. The code contains an ethical conduct provision.

Illinois:

Rules: Chapter 111 – It is unlawful to distribute a drug for less than fair market value not in accordance with law.

Michigan:

Statute: Chapter 333 – May designate an individual to be the pharmacy, manufacturer, or wholesale distributor licensee.

Rules: § 338 – All locations used in connection with distribution must be listed in the application. Includes requirements for storage, handling and records. Inspections may be performed "at reasonable times in reasonable places." A manufacturer or distributor may only distribute to persons licensed by the board or licensed to prescribe. Procedures for examining containers received and sent for identity to prevent contamination and ensure fitness for distribution. Must record the source and address of the seller or transferor and the location from where the drugs were shipped. Records must be maintained for two years. There must be written policies for receipt, security, storage, inventory and distribution of drugs, plus a crisis management policy. Identity information for persons in charge of distribution, storage and handling must be maintained.

Summary of factual data and analytical methodologies

Department staff reviewed the portions of 2007 Wisconsin Act 20 that pertain to drug distributorships and laws and rules from other states prior to preparing the emergency rules.

Analysis and supporting documents used to determine effect on small business

The statute requires an inspection of drug distributors to be completed prior to the June 1, 2008 effective date of the rule. A review of the department's license files revealed there are approximately 100 distributors licensed in Wisconsin that may not have been inspected within the three years prior to being licensed. The board set the bond or letter of credit amount at \$5,000 after a review of the statutory language and other states' requirements.

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

Initial Regulatory Flexibility Analysis

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The \$5,000 bond or letter of credit is estimated to cost \$200.00 to purchase. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling 608-266-8608.

Fiscal Estimate

Summary

The department estimates that this rule will require staff time in the Office of Legal Counsel. The total one-time salary and fringe costs are estimated at \$2,457.

Anticipated costs incurred by private sector

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

Text of Proposed Rule

SECTION 1. Phar 12.06 is created to read:

Phar 12.06 Authorized distributors of record. A manufacturer shall maintain and update at least once per month a list of the manufacturer's authorized distributors of record.

SECTION 2. Phar 13.02 (3m) is created to read:

Phar 13.02 (3m) "Department" means the department of regulation and licensing.

SECTION 3. Phar 13.02 (6) is renumbered 13.02 (12) and is amended to read:

Phar 13.02 (12) "~~Distributor~~" "Wholesale distributor" means ~~any a~~ person engaged in the wholesale distribution of prescription drugs ~~or devices, including, but not limited to,~~ manufacturers; ~~repackers~~ repackagers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, ~~chain drug warehouses, and wholesale drug warehouses;~~ manufacturers' exclusive distributors; manufacturers' authorized distributors of record; prescription drug wholesalers and distributors; independent wholesale prescription drug traders; and ~~pharmacies that conduct wholesale distributions not coincident to the compounding, packaging, labeling and dispensing of prescription drugs and devices~~ 3rd party logistics providers; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution.

SECTION 4. Phar 13.02 (8) and (9) are amended to read:

Phar 13.02 (8) "Facility" means a location ~~at which~~ where a wholesale distribution operations are conducted distributor stores, handles, repackages, or offers for sale prescription drugs.

(9) "Manufacturer" means ~~any a person who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug or device licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices, consistent with the definition of "manufacturer" under the federal food and drug administration's regulations and interpreted guidance implementing the federal prescription drug marketing act.~~

SECTION 5. Phar 13.02 (11) (intro.) and (a) are amended to read:

Phar 13.02 (11) (intro.) "Wholesale distribution" means distribution of a prescription drug or device to persons ~~drug to a person~~ other than a consumer or patient. ~~The term does not include, but does not include any of the following:~~

(a) Intracompany sales, ~~of prescription drugs~~ which include any transaction or transfer between any division, subsidiary, parent, affiliated or related company under the common ownership ~~and or~~ control of a corporate entity ~~or any transaction between co-licensees or a co-licensed product.~~

SECTION 6. Phar 13.02 (11) (b) to (e) are repealed.

SECTION 7. Phar 13.02 (11) (b) to (d) are created to read:

Phar 13.02 (11) (b) The sale, purchase, distribution, trade, or transfer of a prescription drug or offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons.

(c) The distribution of prescription drug samples, if the distribution is permitted under 21 CFR 353 (d).

(d) Drug returns, when conducted by a hospital, health care entity, or charitable institution as provided in 21 CFR 203.23.

SECTION 8. Phar 13.02 (11) (f) is renumbered 13.02 (11) (e).

SECTION 9. Phar 13.02 (11) (f) to (m) are created to read:

Phar 13.02 (11) (f) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription.

(g) The sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets.

(h) The sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record, if the manufacturer states in writing to the receiving authorized distributor of record that the manufacturer is unable to supply the drug and the supplying authorized distributor of record states in writing that the drug has previously been exclusively in the normal distribution channel.

(i) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, if the common carrier does not store, warehouse, or take legal ownership of the drug.

(j) A transaction excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc).

(k) The donation or distribution of a prescription drug under s. 255.056, Stats.

(L) The transfer from a retail pharmacy or pharmacy warehouse of an expired, damaged, returned, or recalled prescription drug to the original manufacturer or original wholesale distributor or to a 3rd-party returns processor or reverse distributor.

(m) The return of a prescription drug, if the return is authorized by the law of this state.

SECTION 10. Phar 13.03 and 13.04 are repealed.

SECTION 11. Phar 13.05 (2) is amended to read:

Phar 13.05 (2) Pass an inspection of the facility conducted by the board or its representative ~~in the 3-year period immediately preceding the date of the application by the board, a pharmacy examining board of another state, the National Association of Boards of Pharmacy, or another accrediting body recognized by the board, with the date of each inspection~~ to determine if the location meets standards specified in ss. Phar 13.08 to 13.11, 21-~~USC 351 and 352 and 21-CFR 211.142 (b).~~

SECTION 12. Phar 13.055 is created to read:

Phar 13.055 Surety bond, irrevocable letter of credit.

The applicant shall supply a surety bond or irrevocable letter of credit in the amount of \$5,000.00, which is issued by a company authorized to do business in Wisconsin. The form of the bond or letter of credit shall be approved by the department and conditioned so that the state shall be fully compensated or reimbursed for, and shall be used to, secure payment of fees or costs that relate to the issuance of a wholesale distributor's license that have not been paid within 30 days after the fees or costs have become final. The bond or letter shall be valid for the entire period of an unexpired license issued to the applicant. No claim may be made against a bond or other security under this section more than one year after the date on which the applicant's wholesale distributor's license expires.

SECTION 13. Phar 13.06 (3) is repealed.

SECTION 14. Phar 13.08 is amended to read:

Phar 13.08 Personnel. A distributor shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of drugs ~~and devices.~~

SECTION 15. Phar 13.09 (intro.) and (3) are amended to read:

Phar 13.09 Facility requirements. (intro.) All facilities at which prescription drugs ~~or devices~~ are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(3) Have a quarantine area for storage of prescription drugs ~~or devices~~ that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed secondary containers that have been opened;

SECTION 16. Phar 13.10 (3) is amended to read:

Phar 13.10 (3) Entry into areas where prescription drugs ~~or devices~~ are held is limited to authorized personnel;

SECTION 17. Phar 13.11 (1) to (4) are amended to read:

Phar 13.11 Storage requirements. (1) All prescription drugs ~~and devices~~ stored in a facility shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such products, or with requirements in the current edition of an official compendium.

(2) If no storage requirements are established for a prescription drug ~~or device~~, the product may be held at a controlled room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(3) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, ~~devices, and/or~~ logs shall be utilized to document proper storage of prescription drugs ~~and devices.~~

(4) The recordkeeping requirements in s. Phar 13.14 shall be followed for all stored drugs ~~and devices.~~

SECTION 18. Phar 13.12 (1) to (3) are amended to read:

Phar 13.12 Examination of materials requirements. (1) Upon receipt by a facility, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs ~~or devices~~, or prescription drugs ~~or devices~~ that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(2) Each outgoing shipment from a facility shall be carefully inspected for identity of the prescription drug ~~or device~~ and to ensure that there is no delivery of prescription drugs ~~or devices~~ that have been damaged in storage or held under improper conditions.

(3) The recordkeeping requirements in s. Phar 13.14 shall be followed for all incoming and outgoing prescription drugs ~~and devices~~ at a facility.

SECTION 19. Phar 13.13 (title) and (1) to (4) are amended to read:

Phar 13.13 (title) Returned, damaged and outdated prescription drug ~~and device~~ requirements. (1) Prescription drugs ~~and devices~~ in a facility that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription drugs ~~and devices~~ until they are destroyed or returned to their supplier.

(2) Any prescription drugs ~~or devices~~ in a facility whose immediate or sealed outer or sealed secondary containers have been opened or used shall be identified as such, and shall be quarantined and physically separated from other prescription drugs ~~and devices~~ until they are either destroyed or returned to the supplier.

(3) If the conditions under which a prescription drug ~~or device~~ has been returned to a facility cast doubt on the product's safety, identity, strength, quality, or purity, then the product shall be destroyed, or returned to the supplier, unless examination, testing, or other investigation proves that the product meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a product has been returned cast doubt on its safety, identity, strength, quality, or purity, the distributor shall consider, among other things, the conditions under which the product has been held, stored, or shipped before or during its return and the condition of the product and its container, carton, or labeling, as a result of storage or shipping.

(4) The recordkeeping requirements in s. Phar 13.14 shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription drugs ~~and devices~~.

SECTION 20. Phar 13.14 (1) (intro.) and (a) to (c), and (2) are amended to read:

Phar 13.14 Recordkeeping requirements. (1) (intro.) A distributor shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs ~~and devices~~. These records shall include the following information:

(a) The source of the drugs ~~or device~~, including the name and principal address of the seller or transferor, and the address of the location from which the drugs ~~or devices~~ were shipped;

(b) The identity and quantity of the drugs ~~or devices~~ received and distributed or disposed of; and

(c) The dates of receipt and distribution or other disposition of the drugs ~~or devices~~.

(2) Inventories and records shall be made available for inspection and copying by the board, its authorized representatives, and authorized representatives of federal, state and local law enforcement agencies for a period of 2 3 years following distribution or other disposition of the drugs ~~or devices~~.

SECTION 21. Phar 13.15 (intro.), (1), (2) (intro.) and (b), and (4) are amended to read:

Phar 13.15 Written policies and procedures. (intro.) A distributor shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs ~~and devices~~, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. A distributor shall include in their written policies and procedures the following:

(1) A procedure to ensure that the oldest approved stock of a prescription drug ~~or device~~ is distributed first. The procedure may permit deviation from this requirement if the deviation is temporary and appropriate.

(2) (intro.) A procedure to be followed for handling recalls and withdrawals of prescription drugs ~~and devices~~. The procedure shall be adequate to deal with recalls and withdrawals due to:

(b) Any voluntary action by the manufacturer to remove defective or potentially defective drugs ~~or devices~~ from the market; or

(4) A procedure to ensure that any outdated prescription drugs ~~or devices~~ are segregated from other products and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs ~~or devices~~. This documentation shall be maintained for 2 3 years after disposition of the outdated drugs ~~or devices~~.

SECTION 22. Phar 13.16 is amended to read:

Phar 13.16 Responsible persons. A distributor shall establish and maintain lists of officers, directors, managers, and ~~other persons~~ the designated representative in charge of wholesale drug ~~and device~~ distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

SECTION 23. Phar 13.17 (1) is amended to read:

Phar 13.17 Compliance with federal, state and local laws. (1) A distributor shall operate in compliance with applicable federal, state, and local laws and regulations. A distributor shall operate in compliance with any applicable federal electronic track and trace pedigree system implemented after July 1, 2011, unless an earlier implementation date is mandated by federal law which explicitly preempts state law. A distributor that deals in controlled substances shall register with the drug enforcement administration.

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.

Notice of Hearing
Pharmacy Examining Board
CR 08-051

NOTICE IS HEREBY GIVEN that the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal sections Phar 13.02 (11) (b) to (e), 13.03, 13.04 and 13.06 (3); to renumber section Phar 13.02 (11) (f); to renumber and amend section Phar 13.02 (6); to amend sections Phar 13.02 (8), (9), (11) (intro.) and (a), 13.05 (2), 13.08, 13.09 (intro.) and (3), 13.10 (3), 13.11 (1) to (4), 13.12 (1) to (3), 13.13 (title) and (1) to (4), 13.14 (1) (intro.), (a) to (c), and (2), 13.15 (4), 13.16 and 13.17 (1); and to create sections Phar 13.02 (3m), (11) (b) to (d), (f) to (m) and 13.055, relating to the regulation of wholesale prescription drug distributors.

Hearing Information

Date: July 23, 2008
Time: 9:45 a.m.
Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 121A
Madison, Wisconsin

Appearances at Hearing and Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708 or by email at pamela.haack@drl.state.wi.us. Written comments must be received by July 25, 2008, to be included in the record of rule-making proceedings.

Agency Contact Person

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

Analysis Prepared by the Department of Regulation and Licensing

Statutes interpreted

Sections 450.02 (3), 450.07 (4) (c), 450.071 (3) (b) and 450.073 (3), Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 450.02 (3), 450.07 (4) (c), 450.071 (3) (b) and 450.073 (3), Stats.

Explanation of agency authority

The Wisconsin Pharmacy Examining Board has authority under ch. 450, Stats., as amended by 2007 Wisconsin Act 20, to promulgate rules for the regulation of wholesale prescription drug distributors.

Related statutes or rules

Ch. 961, Stats., 21 CFR s. 203.50.

Plain language analysis

This proposed rule-making order implements the statutory changes set forth in the drug distributor portions of 2007 Wisconsin Act 20. Several key areas are addressed by this proposed rule-making, including, newly required enhanced qualifications for distributor licensing, inspection requirements, identification and qualification of a designated representative, bonding requirements and additional recordkeeping requirements including where appropriate, the maintaining of drug distribution pedigrees.

SECTION 1 requires a licensed manufacturer to maintain and update at least once per month a list of the manufacturer's authorized distributors of record.

SECTION 2 defines "department."

SECTION 3 amends the definition of "wholesale distributor."

SECTION 4 amends the definitions of "facility" and "manufacturer."

SECTION 5 amends the definition of "wholesale distribution."

SECTION 6 repeals portions of the definition of "wholesale distribution" which are no longer applicable.

SECTION 7 amends the definition of "wholesale distribution."

SECTION 8 renumbers and SECTION 9 creates additional provisions for the definition of "wholesale distribution."

SECTION 10 repeals two licensure provisions no longer statutorily required.

SECTION 11 amends a licensure requirement to require proof of an inspection.

SECTION 12 creates a licensure requirement to require a surety bond or irrevocable letter of credit to be filed with the department.

SECTION 13 repeals a requirement that is not statutorily required.

SECTIONS 14 to 19 remove the reference to "devices."

SECTION 20 amends a recordkeeping requirement.

SECTION 21 amends a recordkeeping requirement.

SECTION 22 adds "designated representative" to the list of required responsible persons.

SECTION 23 amends compliance with federal, state and local laws to include the requirement of an electronic track and trace drug pedigree under certain conditions.

Comparison with rules in adjacent states

Minnesota:

Statutes: Ch. 151 – Each separate facility is required to be licensed (with an annual renewal) and must satisfy a number of conditions relating to storage, security, container labeling, records retention (must be separately maintained and available for inspection within 2 working days of a board request), management and ownership, inspection procedures. An annual report to the board is required. The board may adopt reciprocity rules if the other state has comparable legal standards and that state would also extend reciprocal treatment.

Rules: § 6800 – 1400 – Distributors must track the source of all drugs, along with the name and address of the seller or transferor and the address of the location from where the shipment was sent. Records must be kept for two years, and lists of responsible persons must be maintained with a description of duties and qualifications.

Iowa:

Rules: § 657 – An annual renewal is required. Board inspectors inspect new distribution locations in Iowa. Minimum qualifications are specified in rule. Lists of officers, directors, managers and others in charge must be maintained. Distributors must verify the authority of the person or business to whom the distribution is intended prior to distribution. If distribution is to sales or manufacturers' representatives, distributors must ensure they maintain distribution records. There are facility, security, storage and record-keeping requirements included. Transaction records must include the source of the drug, name and address of seller/transferor, and the address from where it is shipped, in addition to the recipient, the name and address of the purchaser or transferee and the address where drugs are shipped. Records must be maintained for two years. The code contains an ethical conduct provision.

Illinois:

Rules: Chapter 111 – It is unlawful to distribute a drug for less than fair market value not in accordance with law.

Michigan:

Statute: Chapter 333 – May designate an individual to be the pharmacy, manufacturer, or wholesale distributor licensee.

Rules: § 338 – All locations used in connection with distribution must be listed in the application. Includes requirements for storage, handling and records. Inspections may be performed "at reasonable times in reasonable places." A manufacturer or distributor may only distribute to persons licensed by the board or licensed to prescribe. Procedures for examining containers received and sent for identity to prevent contamination and ensure fitness for distribution. Must record the source and address of the seller or transferor and the location from where the drugs were shipped. Records must be maintained for two years. There must be written policies for receipt, security, storage, inventory and distribution of drugs, plus a crisis management policy. Identity information for persons in charge of distribution, storage and handling must be maintained.

Summary of factual data and analytical methodologies

Department staff reviewed the portions of 2007 Wisconsin Act 20 that pertain to drug distributorships and laws and rules from other states prior to preparing this proposed rule-making order.

Analysis and supporting documents used to determine effect on small business

The statute requires an inspection of drug distributors to be completed prior to the June 1, 2008 effective date of the rule. A review of the department's license files revealed there are approximately 100 distributors licensed in Wisconsin that may not have been inspected within the three years prior to being licensed. The board set the bond or letter of credit amount at \$5,000 after a review of the statutory language and other states' requirements.

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

Initial Regulatory Flexibility Analysis

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The \$5,000 bond or letter of credit is

estimated to cost \$200.00 to purchase. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling 608-266-8608.

Fiscal Estimate**Summary**

The department estimates that this rule will require staff time in the Office of Legal Counsel. The total one-time salary and fringe costs are estimated at \$2,457.

Anticipated costs incurred by private sector

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

Text of Proposed Rule

SECTION 1. Phar 12.06 is created to read:

Phar 12.06 Authorized distributors of record. A manufacturer shall maintain and update at least once per month a list of the manufacturer's authorized distributors of record.

SECTION 2. Phar 13.02 (3m) is created to read:

Phar 13.02 (3m) "Department" means the department of regulation and licensing.

SECTION 3. Phar 13.02 (6) is renumbered 13.02 (12) and is amended to read:

Phar 13.02 (12) "~~Distributor~~" "Wholesale distributor" means ~~any a person engaged in the~~ wholesale distribution of prescription drugs ~~or devices, including, but not limited to,~~ manufacturers; ~~repackers~~ repackagers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, ~~chain drug warehouses, and wholesale drug warehouses;~~ manufacturers' exclusive distributors; manufacturers' authorized distributors of record; prescription drug wholesalers and distributors; independent wholesale prescription drug traders; and ~~pharmacies that conduct wholesale distributions not coincident to the compounding, packaging, labeling and dispensing of prescription drugs and devices~~ 3rd-party logistics providers; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution.

SECTION 4. Phar 13.02 (8) and (9) are amended to read:

Phar 13.02 (8) "Facility" means a location ~~at which~~ where a wholesale distribution operations are conducted distributor stores, handles, repackages, or offers for sale prescription drugs.

(9) "Manufacturer" means ~~any a person who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug or device licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices, consistent with the definition of "manufacturer" under the federal food and drug administration's regulations and interpreted guidance implementing the federal prescription drug marketing act.~~

SECTION 5. Phar 13.02 (11) (intro.) and (a) are amended to read:

Phar 13.02 (11) (intro.) "Wholesale distribution" means distribution of ~~a prescription drugs or devices to persons~~ drug to a person other than a consumer or patient. ~~The term does not include, but does not include any of the following:~~

(a) Intracompany sales, of prescription drugs which include any transaction or transfer between any division, subsidiary, parent, affiliated or related company under the common ownership ~~and or~~ control of a corporate entity or any transaction between co-licensees or a co-licensed product.

SECTION 6. Phar 13.02 (11) (b) to (e) are repealed.

SECTION 7. Phar 13.02 (11) (b) to (d) are created to read:

Phar 13.02 (11) (b) The sale, purchase, distribution, trade, or transfer of a prescription drug or offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons.

(c) The distribution of prescription drug samples, if the distribution is permitted under 21 CFR 353 (d).

(d) Drug returns, when conducted by a hospital, health care entity, or charitable institution as provided in 21 CFR 203.23.

SECTION 8. Phar 13.02 (11) (f) is renumbered 13.02 (11) (e).

SECTION 9. Phar 13.02 (11) (f) to (m) are created to read:

Phar 13.02 (11) (f) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription.

(g) The sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets.

(h) The sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record, if the manufacturer states in writing to the receiving authorized distributor of record that the manufacturer is unable to supply the drug and the supplying authorized distributor of record states in writing that the drug has previously been exclusively in the normal distribution channel.

(i) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, if the common carrier does not store, warehouse, or take legal ownership of the drug.

(j) A transaction excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc).

(k) The donation or distribution of a prescription drug under s. 255.056, Stats.

(L) The transfer from a retail pharmacy or pharmacy warehouse of an expired, damaged, returned, or recalled prescription drug to the original manufacturer or original wholesale distributor or to a 3rd-party returns processor or reverse distributor.

(m) The return of a prescription drug, if the return is authorized by the law of this state.

SECTION 10. Phar 13.03 and 13.04 are repealed.

SECTION 11. Phar 13.05 (2) is amended to read:

Phar 13.05 (2) Pass an inspection of the facility conducted by the board or its representative in the 3-year period immediately preceding the date of the application by the board, a pharmacy examining board of another state, the National Association of Boards of Pharmacy, or another accrediting body recognized by the board, with the date of each inspection to determine if the location meets standards specified in ss. Phar 13.08 to 13.11, 21 USC 351 and 352 and 21 CFR 211.142 (b).

SECTION 12. Phar 13.055 is created to read:

Phar 13.055 Surety bond, irrevocable letter of credit. The applicant shall supply a surety bond or irrevocable letter of credit in the amount of \$5,000.00, which is issued by a company authorized to do business in Wisconsin. The form of the bond or letter of credit shall be approved by the department and conditioned so that the state shall be fully

compensated or reimbursed for, and shall be used to, secure payment of fees or costs that relate to the issuance of a wholesale distributor's license that have not been paid within 30 days after the fees or costs have become final. The bond or letter shall be valid for the entire period of an unexpired license issued to the applicant. No claim may be made against a bond or other security under this section more than one year after the date on which the applicant's wholesale distributor's license expires.

SECTION 13. Phar 13.06 (3) is repealed.

SECTION 14. Phar 13.08 is amended to read:

Phar 13.08 Personnel. A distributor shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of drugs ~~and devices~~.

SECTION 15. Phar 13.09 (intro.) and (3) are amended to read:

Phar 13.09 Facility requirements. (intro.) All facilities at which prescription drugs ~~or devices~~ are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(3) Have a quarantine area for storage of prescription drugs ~~or devices~~ that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed secondary containers that have been opened;

SECTION 16. Phar 13.10 (3) is amended to read:

Phar 13.10 (3) Entry into areas where prescription drugs ~~or devices~~ are held is limited to authorized personnel;

SECTION 17. Phar 13.11 (1) to (4) are amended to read:

Phar 13.11 Storage requirements. (1) All prescription drugs ~~and devices~~ stored in a facility shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such products, or with requirements in the current edition of an official compendium.

(2) If no storage requirements are established for a prescription drug ~~or device~~, the product may be held at a controlled room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(3) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, ~~devices,~~ ~~and/or~~ ~~or~~ logs shall be utilized to document proper storage of prescription drugs ~~and devices~~.

(4) The recordkeeping requirements in s. Phar 13.14 shall be followed for all stored drugs ~~and devices~~.

SECTION 18. Phar 13.12 (1) to (3) are amended to read:

Phar 13.12 Examination of materials requirements. (1) Upon receipt by a facility, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs ~~or devices~~, or prescription drugs ~~or devices~~ that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(2) Each outgoing shipment from a facility shall be carefully inspected for identity of the prescription drug ~~or device~~ and to ensure that there is no delivery of prescription drugs ~~or devices~~ that have been damaged in storage or held under improper conditions.

(3) The recordkeeping requirements in s. Phar 13.14 shall be followed for all incoming and outgoing prescription drugs ~~and devices~~ at a facility.

SECTION 19. Phar 13.13 (title) and (1) to (4) are amended to read:

Phar 13.13 (title) Returned, damaged and outdated prescription drug and device requirements. (1) Prescription drugs and devices in a facility that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription drugs and devices until they are destroyed or returned to their supplier.

(2) Any prescription drugs or devices in a facility whose immediate or sealed outer or sealed secondary containers have been opened or used shall be identified as such, and shall be quarantined and physically separated from other prescription drugs and devices until they are either destroyed or returned to the supplier.

(3) If the conditions under which a prescription drug or device has been returned to a facility cast doubt on the product's safety, identity, strength, quality, or purity, then the product shall be destroyed, or returned to the supplier, unless examination, testing, or other investigation proves that the product meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a product has been returned cast doubt on its safety, identity, strength, quality, or purity, the distributor shall consider, among other things, the conditions under which the product has been held, stored, or shipped before or during its return and the condition of the product and its container, carton, or labeling, as a result of storage or shipping.

(4) The recordkeeping requirements in s. Phar 13.14 shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription drugs and devices.

SECTION 20. Phar 13.14 (1) (intro.) and (a) to (c), and (2) are amended to read:

Phar 13.14 Recordkeeping requirements. (1) (intro.) A distributor shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and devices. These records shall include the following information:

(a) The source of the drugs or device, including the name and principal address of the seller or transferor, and the address of the location from which the drugs or devices were shipped;

(b) The identity and quantity of the drugs or devices received and distributed or disposed of; and

(c) The dates of receipt and distribution or other disposition of the drugs or devices.

(2) Inventories and records shall be made available for inspection and copying by the board, its authorized representatives, and authorized representatives of federal, state and local law enforcement agencies for a period of 2 3 years following distribution or other disposition of the drugs or devices.

SECTION 21. Phar 13.15 (intro.), (1), (2) (intro.) and (b), and (4) are amended to read:

Phar 13.15 Written policies and procedures. (intro.) A distributor shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs and devices, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in

inventories. A distributor shall include in their written policies and procedures the following:

(1) A procedure to ensure that the oldest approved stock of a prescription drug or device is distributed first. The procedure may permit deviation from this requirement if the deviation is temporary and appropriate.

(2) (intro.) A procedure to be followed for handling recalls and withdrawals of prescription drugs and devices. The procedure shall be adequate to deal with recalls and withdrawals due to:

(b) Any voluntary action by the manufacturer to remove defective or potentially defective drugs or devices from the market; or

(4) A procedure to ensure that any outdated prescription drugs or devices are segregated from other products and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs or devices. This documentation shall be maintained for 2 3 years after disposition of the outdated drugs or devices.

SECTION 22. Phar 13.16 is amended to read:

Phar 13.16 Responsible persons. A distributor shall establish and maintain lists of officers, directors, managers, and other persons the designated representative in charge of wholesale drug and device distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

SECTION 23. Phar 13.17 (1) is amended to read:

Phar 13.17 Compliance with federal, state and local laws. (1) A distributor shall operate in compliance with applicable federal, state, and local laws and regulations. A distributor shall operate in compliance with any applicable federal electronic track and trace pedigree system implemented after July 1, 2011, unless an earlier implementation date is mandated by federal law which explicitly preempts state law. A distributor that deals in controlled substances shall register with the drug enforcement administration.

Notice of Hearing Public Instruction CR 08-044 and EmR0813

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.42 (4) and 227.11 (2) (a), Stats., and interpreting ss. 115.42, Stats., the Department of Public Instruction will hold a public hearing as follows to consider emergency and proposed permanent rules amended under Chapter PI 37, relating to grants for national teacher certification and master educator licensure. The hearing will be held as follows:

Hearing Information

| Date and Time | Location |
|----------------------|--|
| July 23, 2008 | Madison |
| 3:00 – 4:30 p.m. | GEF 3 Building, Room 041 125 South Webster Street |

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Tammy Huth, Assistant Director, Teacher Education, Professional Development and Licensing, at (608) 266-1788 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

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

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

Submission of Written Comments

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than July 29, 2008, will be given the same consideration as testimony presented at the hearing.

Agency Contact Person

Tammy Huth, Assistant Director, Teacher Education, Professional Development and Licensing, (608) 266-1788 or tammy.huth@dpi.wi.gov.

Analysis Prepared by the Department of Public Instruction

Statute interpreted

Section 115.42, Wis. Stats.

Statutory authority

Sections 115.42 (4) and 227.11 (2) (a), Wis. Stats.

Explanation of agency authority

Section 115.42 (4), Wis. Stats., requires the department to promulgate rules to implement and administer this program, including all of the following:

- The application process, including necessary documentation.
- The selection process for grant recipients.
- The number of times that a teacher may be exempt from continuing professional education requirements.

Related statute or rule

Chapter PI 34, Wis. Admin. Code.

Plain language analysis

There are two ways an individual may receive a grant under the national teacher certification or master educator licensure program under s. 115.42, Stats.:

- Through a national process by obtaining a national certificate issued by the National Board for Professional Teaching Standards (NBPTS).
- Through a state process by completing the Wisconsin master educator assessment process.

Previous language under s. 115.42, Stats., allowed only persons certified through the national process to be awarded grants of up to \$2,000 for the first year and \$2,500 annually for nine years thereafter if certain conditions were met. 2007 Wisconsin Act 20, the biennial budget bill, modified s. 115.42, Stats., to allow persons receiving master educator licenses through the state process to also receive the grants. In addition, the Act provided an incentive to grant recipients to work in high poverty schools. Finally, the Act allows master educators through the state process to be exempt from continuing education requirements as are teachers certified through the national process.

To reflect statutory language, Chapter PI 37, Wis. Admin. Code, relating to Grants for National Teacher Certification, is being modified to: 1) allow master educators that have completed the Wisconsin master educator assessment process to receive a grant under the program, 2) allow master educators receiving licenses through the state process or teachers certified through the national process to receive \$5,000 (rather than \$2,500) if they work in a school in which at least 60 percent of the pupils enrolled are eligible for free or reduced-price lunch, and 3) allow master educators receiving licenses through the state process to be exempt from continuing education requirements.

The rules are also being modified to clarify that:

- The term “teacher” includes school psychologists, school counselors, and school social workers who are not under contract as an administrator.
- A teacher must be working as an instructor, school psychologist, school counselor, or school social worker for a minimum of 40 percent full-time equivalency for at least 180 days in a school year to qualify for a grant.
- A teacher may renew his or her 10-year national board certification or Wisconsin master educator license and continue receiving a grant under this program.

The provisions allowing teachers who have completed the state process to receive grants under this program first applies to persons who were licensed as Wisconsin master educators by the department on or after July 1, 2005.

The provision allowing teachers to receive \$5,000, rather than \$2,500, if employed in high poverty districts first applies to persons applying for a grant on or after July 1, 2007.

The provision requiring an applicant to work 40 percent full-time equivalency for at least 180 days in a school year first applies to persons applying for a grant on or after July 1, 2008.

Emergency rules were promulgated effective May 17, 2008, in order to establish the new application criteria and procedures to award grants to eligible applicants in the 2007-08 school year.

Comparison with federal regulations

None

Comparison with rules in adjacent states

Michigan and Minnesota – do not have rules relating to grants for national board certified teachers or state certified master educators.

Iowa – As of December 31, 2007, funds will no longer be available to new candidates. However, Iowa did provide a grant program to national board certified teachers (NBCTs) prior to that date. NBCTs that received the grant will be able to complete the 10 year grant process. To be eligible, an applicant must meet all of the following:

- The individual is a national board certified (NBC) teacher.
- The individual is a teacher.
- The individual is employed by a school district in Iowa.
- The individual receives a salary as a classroom teacher.
- The individual completes the application process.
- The individual has not received an NBC annual award for more than ten years.

The initial award is for one-half of the reimbursement fee charged by the NBPTS, or a prorated amount, if funds are not available.

An eligible teacher who received NBC certification prior to May 1, 2000, will receive an annual award of up to \$5,000 or a prorated amount for a period of ten years or until the

teacher's total state annual award amount reaches \$50,000. An eligible teacher who received NBC certification after May 1, 2000 will receive an annual award of up to \$2,500 or a prorated amount for a maximum of ten years. An otherwise eligible teacher who possesses a teaching contract that is less than full-time shall receive an award prorated to reflect the type of contract (i.e. half-time, quarter-time, etc.).

It is unclear as to whether Iowa has a state master educator certification process.

Illinois – Requires persons holding a certificate issued by the NBPTS to apply for a master certificate. Holders of an Illinois master certificate who are employed for no less than the equivalent of half of the school year as a teacher or school counselor in a public school setting are eligible for a \$3,000 stipend. If funding is limited, this amount may be prorated and grant awards may be prioritized. Holders of an Illinois master certificate shall be eligible for an annual incentive payment for each year during which:

- He or she holds a certificate issued by the NBPTS.
- He or she is employed by a school district or other public entity providing early childhood, elementary, or secondary education.
- He or she works no less than the equivalent of half the school year.

Additional incentives are provided for applicants that meet further requirements such as providing at least 60 hours of mentoring to classroom teachers.

Illinois does not have a state master educator certification process.

Summary of factual data and analytical methodologies

The intent of awarding grants under this program is to encourage teachers to obtain this rigorous certification and apply the knowledge gained to help pupils directly through classroom instruction and pupil services. It has never been the intent to award funds simply because an individual holds a master educator license or national board certificate.

In its 2007–09 biennial budget request, the department requested that the national teacher certification grant program be expanded to allow teachers receiving master educator licenses through the state process to receive the same grants as those teachers receiving licenses through national certification. To address the needs of high poverty schools that have difficulty attracting highly qualified teachers, the department also proposed to double the amount awarded (\$5,000, rather than \$2,500) to persons applying for continuing grants under s. 115.42 (2), Stats., if those persons are employed in a school in which at least 60 percent of the school's pupil population is eligible for free or reduced-price lunch under 42 USC 1758 (b).

To encourage individuals to become state certified master educators, the department created a pilot program for FY06 and FY07 to pay up to \$2,000 to each applicant who successfully completed the process. Applicants that completed the Wisconsin assessment process received a Wisconsin Master Educator License and received an "initial" grant from the department using federal Title II–A, Elementary and Secondary Education Act funds. Because those funds were limited and not available for long-term obligation, these individuals did not receive "continuing" grants of \$2,500. These individuals should be rewarded for participating in the pilot program and receive the \$2,500 (or \$5,000) grant for nine years just as future Wisconsin master

educators will receive these funds. Therefore, an initial applicability section was included in the law (and the rule) to clarify the grant program applies to those master educators who were licensed by the department on or after July 1, 2005.

2007 Wisconsin Act 20 included these provisions in the law and the rule is now being modified to reflect those changes.

The rules are also being modified to clarify that:

- A teacher must be working as an instructor for a minimum of 40 percent full-time equivalency for at least 180 days in a school year to qualify for a grant. This provision will require teachers to be employed as teachers to be eligible to receive a grant.
- The term "teacher" includes school psychologists, school counselors and school social workers who are not administrators. The Wisconsin master educator assessment process offers licensure in areas not currently offered under the NBPTS, including school administration categories and school psychologists, school counselors, and school social workers. The legislature wanted the program to be expanded to "teachers" but not to "school administration categories." Because individuals with non-administrative school psychologist, counselor, and social worker licenses directly serve pupils, the department asserts they should be included in the category of teachers for purposes of these grants.
- A teacher may renew his or her 10-year national board certification or Wisconsin master educator license and continue receiving a grant under this program. The certification of first round national board certified teachers will expire next year. This provision will clarify that they may re-apply for grants if they renew their national certification. Subsequent national board certified teachers or Wisconsin master educator licensed teachers would be eligible to receive a grant upon renewal of their certification or license.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

Summary

Under s. 20.255 (3) (c), Stats., 2007 Wisconsin Act 20 appropriated additional funds to award grants to persons completing the Wisconsin master educator assessment process and receiving a master educator license in addition to persons holding a National Board for Professional Teaching Standards certificate. An initial grant of up to \$2,000 is awarded for the first year and \$2,500 is awarded annually for nine years thereafter if certain statutory conditions are met. The Act increased the \$2,500 grant amount to \$5,000 for teachers who are employed in a school in which at least 60 percent of the pupils enrolled are eligible for free or reduced-price lunch.

The rule establishes criteria and procedures for awarding grants under this program. The rules will have no fiscal effect on local governments or small businesses as defined in s. 227.114 (1) (a), Stats.

The costs associated with administering this grant program will be absorbed by the department.

Notice of Hearing

Transportation

CR 08-058 and EmR0818

NOTICE IS HEREBY GIVEN that pursuant to ss. 348.25 (3) and (4) (intro.) and 348.27 (15) (d), Stats., interpreting s. 348.27 (15), Stats., as created by 2007 Wis. Act 171, the Department of Transportation will hold a public hearing on permanent and emergency rules creating Chapter Trans 263, Wis. Adm. Code, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

Hearing Information

| <u>Date</u> | <u>Location</u> |
|-------------------------------------|--|
| July 30, 2008 at 10:00 AM | Hill Farms State Transportation Bldg. Room 144-B 4802 Sheboygan Avenue Madison, WI, |

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

Copies of Rules

A copy of the proposed permanent rule or emergency rule may be obtained upon request from Carson Frazier, Wisconsin Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

Agency Contact Person and Submission of Written Comments

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

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

Analysis Prepared by the Department of Transportation

Statutes interpreted

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

Statutory authority

Sections 348.25 (3), (4) (intro.) and 348.27 (15) (d), Stats.

Explanation of agency authority

The Department is authorized to administer statutes and administrative rules related to vehicle weights, widths, heights, and lengths. Nonstatutory provisions created in 2007 Wis. Act 171, section 6, require the Department to promulgate rules implementing a newly-created multiple trip permit for transporting granular roofing materials by not later than August 1, 2008.

Related statute or rule

Chapter 348, Stats., and Chapters Trans 250 to 278, Wis. Adm. Code.

Plain language analysis

This proposed rule is required by 2007 Wis. Act 171, section 6. The new law creates a multiple trip permit for certain overweight vehicles or vehicle combinations transporting granular roofing materials. The law establishes certain conditions for the permit and certain limitations on operation.

This proposed rule implements those conditions and limitations:

- The permit allows excess gross weight of 10,000 pounds, but not to exceed 90,000 pounds.
- The permit requires that the motor carrier on whose behalf the load is transported be named in the permit.
- The permit requires a named origin, destination, and designated route of travel.
- The permit requires that any municipality or county whose highways make up any part of the designated route pass a resolution allowing that transport, and requires the permit applicant to submit copies of all resolutions to the department along with the permit application.

The proposed rule defines “granular roofing material” in order to make eligibility for permit and enforcement clear and uniform.

The proposed rule states that the permit is not valid on the interstate highway system, and is valid on not more than 2.5 miles of the state trunk highway system.

Comparison with federal regulations

Federal law governs overweight transport on certain federal highways, including general prohibition of divisible overweight loads on the interstate highway system. Pursuant to 23 U.S.C. section 127 and 23 C.F.R. section 658, divisible overweight loads are not allowed on the interstate highway system. 2007 Wis. Act 171 provides that a permit under this law may be issued for up to 2.5 miles on any state trunk highway if such issuance of the permit is consistent with federal law. This proposed rule is consistent with federal law because 2007 Wis. Act 171 authorizes permits for this type of divisible load and transport is not allowed on the interstate highway system.

Comparison with rules in adjacent states

Michigan: Michigan has no rule or statute authorizing overweight loads of granular roofing materials, or similar divisible overweight loads.

Minnesota: Minnesota has no rule or statute authorizing overweight loads of granular roofing materials, or similar divisible overweight loads.

Illinois: Illinois has no rule or statute authorizing overweight loads of granular roofing materials, or similar divisible overweight loads.

Iowa: Iowa has no rule or statute authorizing overweight loads of granular roofing materials, or similar divisible overweight loads.

Summary of factual data and analytical methodologies

This proposed rule implements a newly-enacted law. The Department’s implementation of the law, including policies, procedures, and requirements, is the same as the Department applies to all similar multiple trip permits.

Initial Regulatory Flexibility Analysis

This proposed rule implements 2007 Wis. Act 171. The law will allow all businesses, including small businesses, to

transport granular roofing materials at weights exceeding state load limits. This would have a beneficial effect on small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal Estimate

Summary

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

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

Notice of Hearing Workforce Development Unemployment Insurance, Chs. DWD 100-150 CR 08-059

NOTICE IS HEREBY GIVEN that pursuant to ss. 108.225 (16) (a) 3. and (am) 2., 108.14 (2), and s. 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to examine rules creating Chapter DWD 136, relating to wages exempt from unemployment insurance levy and affecting small businesses.

Hearing Information

July 22, 2008 MADISON
Tuesday G.E.F. 1 Building, H306
10:00 a.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 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 audiotape format will be made available on request to the fullest extent possible.

Agency Contact Person

Tracey Schwalbe, Research Attorney, Unemployment Insurance Bureau of Legal Affairs, (608) 266-9641, tracey.schwalbe@dwd.state.wi.us.

Submission of Written Comments

Written comments may be submitted to Tracey Schwalbe, UI Research Attorney, Dept. of Workforce Development, P.O. Box 8942, 201 E. Washington Avenue, Madison, WI 53707-8942, or tracey.schwalbe@dwd.state.wi.us. Written comments received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than July 23, 2008, will be given the same consideration as testimony presented at the hearing.

Copies of Proposed Rules

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 the department address above.

Analysis Prepared by the Department of Workforce Development

Statutory authority

Sections 108.225 (16) (a) 3. and (am) 2., 108.14 (2), and 227.11, Stats.

Statutes interpreted

Sections 108.225 (16), Stats.

Related statutes and rules

Section 812.34, Stats., and 15 USC 1673

Explanation of agency authority

Section 108.225, Stats., gives the department the power of administrative levy upon any property of the debtor to allow the department to collect forfeitures or benefit overpayments owed under the unemployment insurance program. The individual debtor is entitled to a subsistence allowance of a dollar amount or percent of wages that are exempt from levy by the department.

Levy to recover forfeitures. Pursuant to s. 108.04 (11) (c), Stats., any employing unit that aids and abets or attempts to aid and abet a claimant in committing an act of concealment may be required to forfeit an amount equal to the amount of the benefits the claimant improperly received as a result of the concealment plus an additional forfeiture for each single act of concealment the employing unit aids and abets or attempts to aid and abet. When the department collects the forfeiture by levy, s. 108.225 (16) (a), Stats., provides that an individual is entitled to an exemption from levy of the greater of the following:

1. A subsistence allowance of 75% of the debtor's disposable earnings.
2. An amount equal to 30 times the federal minimum hourly wage for each full week of the debtor's pay period.
3. In the case of earnings for a period other than a week, a subsistence allowance computed so that it is equivalent to 30 times the federal minimum hourly wage using a multiple of the federal minimum hourly wage prescribed by rule of the department.

Levy to recover benefit overpayments. When the department collects benefit overpayments by levy, s. 108.225 (16) (am), Stats., provides that an individual is entitled to an exemption from levy of 80% of the individual's disposable earnings, except that:

1. A debtor's disposable earnings are totally exempt from levy if the debtor's wages are below the federal poverty guidelines for a household of the debtor's size or the levy would cause that result.
2. Upon petition by a debtor demonstrating hardship, the department may increase the portion of the debtor's disposable earnings that are exempt from levy.
3. The department may decrease or eliminate the exemption from levy if a final determination has been issued under s. 108.09, Stats., or a judgment has been entered under s. 108.24 (1), Stats., in which the debtor has been found guilty of making a false statement or representation to obtain benefits and the benefits and any assessment under s. 108.04 (11) (cm), Stats., have not been paid or reimbursed at the time that the levy is issued, unless the fund's treasurer has written off the debt under s. 108.16 (3) (a), Stats.

The law requires the department to prescribe by rule a methodology for application of the exemption that provides that a debtor's disposable earnings are totally exempt from levy if the debtor's wages are below the federal poverty guidelines for a household of the debtor's size or the levy would cause that result.

Summary of proposed rule

The proposed rule prescribes the methodology for application of s. 108.225 (16), Stats., and 15 USC 1673, for a third party employer to determine an individual's wages exempt from levy by the department. The proposed rule expresses the calculations necessary to determine the amount of wages excluded from department levy and the maximum amount that may levied by the department to recover benefit overpayments and forfeitures.

- To calculate the maximum levy amount for collecting forfeitures or benefit overpayments involving fraud or concealment, s. DWD 136.02 provides that the maximum levy amount shall be 25% of the individual's disposable earnings for the pay period unless by levying that amount, the total aggregate of all levies against the individual will exceed 25% of the individual's disposable earnings plus prior levies for the pay period, or exceed the amount by which the individual's disposable earnings exceed 30 times the federal minimum hourly wage for a week or for equivalent pay periods (the federal garnishment protections). If the department cannot take the full 25% levy amount, the proposed rule provides that the department may levy the lesser of the difference between:
 - 25% of the individual's disposable earnings plus prior levies for the pay period, and the amount of prior levies in effect for the pay period, or
 - the individual's weekly disposable earnings and 30 times the federal minimum hourly wage (or an equivalent pay period).
- To calculate the maximum levy amount for collecting benefit overpayments, s. DWD 136.03 (1) (a) directs that the department may not levy any amount if the individual's wages are below the federal poverty guidelines. The maximum levy amount shall be 20% of the individual's disposable earnings for the pay period unless by levying that amount, the full levy amount will put the individual's disposable earnings below the poverty guidelines for the individual's household size, or if the total aggregate of all levies against the individual will exceed 25% of the total of the individual's disposable earnings plus prior levies for the pay period, or exceed the amount by which the individual's disposable earnings exceed 30 times the federal minimum hourly wage for a week or for equivalent pay periods (the federal garnishment protections). If the department cannot take the full 20% levy amount, the proposed rule provides that the department may levy the lesser of the difference between:
 - the individual's gross earnings and the federal poverty guidelines, or
 - 25% of the individual's disposable earnings plus prior levies for the pay period and the amount of prior levies in effect for the pay period, or
 - the individual's weekly disposable earnings and 30 times the federal minimum hourly wage (or an equivalent pay period).

The proposed rule defines relevant terms and directs the department to use the guidelines adopted by the judicial conference annually under s. 812.34 (3), Stats., or a

comparable table. Finally, the proposed rule establishes amounts to be used in the exemption calculations that are equivalent to 30 times the federal minimum hourly wage for a week (for two-week, semi-monthly and monthly pay periods).

Comparison with federal regulations

In addition to the state exemptions from levy, the federal law, 15 USC 1673, prescribes that the maximum part of the aggregate disposable earnings of an individual for any workweek that is subject to garnishment may not exceed the smaller of the following:

1. 25% of the individual's disposable earnings for that week.
2. The amount by which the individual's earnings for that week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable.

Comparison with rules in adjacent states

Iowa's Administrative Code provides that a garnishment of an individual's wages may not exceed the restrictions imposed by the state garnishment law or by the federal Consumer Protection Act, 15 USC 1671 et seq. 875 IAC 217.39. Iowa law provides maximum amounts of an employee's earnings that may be garnished during one calendar year depending on the earnings of the employee.

Michigan law provides that unemployment levies are subject to the same wage protections as the state's garnishment law.

Minnesota law provides for garnishment for delinquent taxes and unemployment benefit overpayments. The maximum garnishment allowed for any one pay period must be decreased by any amounts payable under any other garnishment action.

Illinois provides that unemployment insurance liens may be made against employers, subject to personal property exemptions which have been interpreted to include wages up to \$4,000.

Summary of factual data and analytical methodologies

The rule implements the requirements of s. 108.225 (16), Stats., and 15 USC 1673. The Department reviewed forms prepared by the Judicial Conference for implementation of s. 812.34, Stats., regarding exemptions from earnings garnishment based on a judgment debt.

Analysis used to determine effect on small businesses

The substantive provisions are in the statute. The rule merely prescribes the methodology for application of the statutes. Management representatives of the Unemployment Insurance Advisory Council disseminated the worksheet and forms that will be used to implement the rule to businesses for comments. Two comments were received and will be incorporated into the forms.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

Summary

No significant impact was expected from the law change adopting s. 108.226 (16) (am), Stats. The rule implements the statute and no other fiscal impact is expected.

State fiscal effect

None

Types of local governmental units affected

Towns, villages, cities, counties, school districts and WTCS districts.

Submittal of Proposed Rules to the Legislature

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

Government Accountability Board
CR 08-024

A rule-making order creating Chapter GAB 12, relating to training and certification of municipal clerks.

Workforce Development
Family Supports, Chs. DWD 12-59
CR 08-020

A rule-making order revising section DWD 56.08, relating to child care copayments.

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.

Agriculture, Trade and Consumer Protection **CR 07-067**

A rule-making order revising Chapters ATPC 140, 141, 147 and 148, relating to agricultural marketing orders and marketing boards.
Effective 8-1-08.

Natural Resources **Water Regulation, Chs. NR 300—** **CR 07-112**

A rule-making order revising sections NR 345.03 and 345.04, relating to general permits for dredging in Great Lakes navigable waterways.
Effective 8-1-08.

Natural Resources **Air Pollution Control, Chs. NR 400—** **CR 07-104**

A rule-making order revising Chapters NR 405, 407, 408 and 484, relating to major source definition and affecting small business.
Effective 8-1-08.

Workforce Development **Family Supports, Chs. DWD 12-59** **CR 08-009**

A rule-making order revising section DWD 56.06 (1) (a), relating to child care rates.
Effective 8-1-08.

Workforce Development **Unemployment Insurance, Chs. DWD 100-150** **CR 08-019**

A rule-making order revising Chapters DWD 100, 140 and 149, relating to disclosure of unemployment insurance records and affecting small businesses.
Effective 8-1-08.

Rules Published with this Register and Final Regulatory Flexibility Analyses

*The following administrative rule orders have been adopted and published in the **June 30, 2008**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

For subscription information, contact Document Sales at (608) 266-3358.

Administration CR 07-106

A rule-making order creating Chapter Adm 49, relating to plat review fees. Effective 7-1-08.

Summary of Final Regulatory Flexibility Analysis

Land development corporations and engineering and surveying companies who divide land in Wisconsin will be affected by this rule. The benefit they receive is an assurance that the lots they are creating can be sold for residential development. A typical plat contains 25 lots with an average sale price of \$70,000 per lot. The fee charged under the rule will be \$48 per lot, which is an increase from the current fee, adopted in 1997, of \$28 per lot.

The rule prescribes a standard fee, making the cost of review consistent and predictable.

Summary of Comments by Legislative Review Committees

No comments were reported.

Agriculture, Trade and Consumer Protection CR 07-061

A rule-making order revising Chapters ATPC 10 and 12, relating to animal health fees. Effective 7-1-08 and 7-1-09.

Summary of Final Regulatory Flexibility Analysis

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

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

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

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

Summary of Comments by Legislative Review Committees

On March 27, 2008 DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Higher Education and to the Assembly Committee on Agriculture. The legislative review period expired on May 5, 2008.

No hearings were held and neither committee requested any changes to the rule.

Commerce CR 07-089

A rule-making order revising Chapters Comm 5 and 18, relating to the licensing of elevator contractors and installers. Effective 7-1-08 and 1-1-09.

Summary of Final Regulatory Flexibility Analysis

The rules implement mandates imposed by 2005 Wisconsin Act 456. The fiscal estimates prepared for the enabling legislation indicated that there are approximately 40 elevator contractors and 500 elevator mechanics that would be impacted by the legislation. The Department believes the rules will not have a significant impact on small business over that imposed by the Act.

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce CR 07-117

A rule-making order creating Chapter Comm 4, relating to grants for construction career academies. Effective 7-1-08.

Summary of Final Regulatory Flexibility Analysis

The rules establish procedures for the issuance of grants to assist construction career academies, as instructed under s. 101.31, Stats., of 2007 Wisconsin Act 20. The enabling legislation affords certain entities the opportunity to acquire funds to further education in the various fields of construction. Based upon the conditions established under the enabling legislation, it is anticipated that construction organizations, high schools and technical colleges will be the likely applicants for the grants. These types of entities are not small businesses by definition. Therefore, the department does not believe that the rules will have a direct effect on small business.

Summary of Comments by Legislative Review Committees

No comments were received.

Employee Trust Funds **CR 07-062**

A rule-making order revising Chapters ETF 10, 11, 20 and 50, relating to the purchase of credit for service. Effective 7-1-08.

Summary of Final Regulatory Flexibility Analysis

This rule-making has no significant effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

Summary of Comments by Legislative Review Committees

No comments were received.

Financial Institutions – General **CR 08-015**

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

Summary of Final Regulatory Flexibility Analysis

This rule will have no adverse impact on small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Health and Family Services **CR 07-115**

A rule-making order to repeal and recreate Chapter HFS 149, relating to the special supplemental nutrition program for Women, Infants and Children (WIC) vendors and participants, and affecting small businesses. Effective 7-1-08.

Summary of Final Regulatory Flexibility Analysis

The rules will affect 439 small grocery stores; however, the rules will not have a significant economic impact on these small businesses that are compliant with this rule. Small stores that do not currently maintain regular established hours of operation may have to increase the time open to at least five days a week for a minimum of two four-hour blocks of time. This requirement may result in an increase in sales that would off-set any increase in costs.

Summary of Comments by Legislative Review Committees

No comments were reported.

Health and Family Services **CR 08-005**

A rule-making order revising Chapters HFS 1 and 65, relating to determining parental payment limits for children's long term support services and family support services. Effective 7-1-08.

Summary of Final Regulatory Flexibility Analysis

The rule change will not affect small business as "small business" is defined in s. 227.114 (1) (a), Stats. Small businesses are not involved in the process of screening newborns for congenital and metabolic disorders.

Summary of Comments by Legislative Review Committees

No comments were received.

Health and Family Services **CR 08-017**

A rule-making order revising Chapters HFS 1 and 65, relating to determining parental payment limits for children's long term support services and family support services. Effective 7-1-08.

Summary of Final Regulatory Flexibility Analysis

The rules do not affect businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Insurance **CR 08-006**

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

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources **CR 07-017**

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

Summary of Final Regulatory Flexibility Analysis

The rule does not have a significant economic impact on small businesses. The facilities affected by the rule are power plants and major manufacturers of pulp and paper. These facilities are not considered to be small businesses.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. On March 6, 2008, the Assembly Committee on Natural Resources held a public hearing. The department did not receive any comments or requests for modification following the hearing.

Transportation **CR 07-081**

A rule-making order revising Chapter Trans 101, relating to the demerit point system. Effective 7-1-08.

Summary of Final Regulatory Flexibility Analysis

There will be no significant adverse effect on small businesses

Summary of Comments by Legislative Review Committees

No comments were reported.

Transportation
CR 07-114

A rule-making order revising Chapter Trans 131, relating to the vehicle emission inspection program. Effective 7-1-08.

Summary of Final Regulatory Flexibility Analysis

Section 285.30, Stats., as amended by 2007 Wis. Act 20, eliminates the testing requirement for vehicles model year before 1996. To the extent that small businesses own older vehicles, the law eliminates the need for those vehicles to be tested. The law also requires diesel-powered vehicles of model year 2007 and newer, and vehicles model year 2007 and newer up to 14,000 lbs gross vehicle weight rating to undergo OBD II emission testing. On the other hand, these vehicles are manufactured with OBD II equipment and software, and maintaining the vehicles' emission systems is a reasonable expectation, and thus not unduly burdensome. The statute provides for enforcement of emission testing through vehicle registration denial.

Summary of Comments by Legislative Review Committees

No comments were reported.

Transportation
CR 08-002

A rule-making order creating Chapter Trans 178, relating to the Unified Carrier Registration system. Effective 7-1-08.

Summary of Final Regulatory Flexibility Analysis

This rule is derived solely from federal law, federal regulation, and Unified Carrier Registration Agreement. Any effect on small businesses is a result of federal law, federal regulation and the Unified Carrier Registration Agreement. The bill will affect some small businesses by requiring them to pay an annual registration fee based on the size of its truck fleet, with fees of \$39 to \$806 annually. These fees are established under federal law at 49 CFR 367.20 but may be revised annually by publication in the federal register. If Wisconsin does not charge these fees, small businesses that operate affected trucks and trailers outside this state will nevertheless be required to pay these same fees to other states.

Summary of Comments by Legislative Review Committees

No comments were reported.

Sections Affected by Rule Revisions and Corrections

The following administrative rule revisions and corrections have taken place in **June 2008**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Administration

Ch. Adm 49 (Entire Chapter)

Agriculture, Trade and Consumer Protection

Ch. ATCP 10

- S. ATCP 10.01 (106) (b)
- S. ATCP 10.06 (3) (b)
- S. ATCP 10.12 (1)
- S. ATCP 10.14 (1)
- S. ATCP 10.20 (1) (b)
- S. ATCP 10.22 (9) (b)
- S. ATCP 10.27 (1) to (3)
- S. ATCP 10.29 (1)
- S. ATCP 10.37 (1) (a), (3) (g)
- S. ATCP 10.40 (4) (a)
- S. ATCP 10.41 (5) (a) to (d), (6)
- S. ATCP 10.46 (7) (a) to (c)
- S. ATCP 10.47 (3) (b)
- S. ATCP 10.49 (1m)
- S. ATCP 10.51 (1m)
- S. ATCP 10.61 (4), (5), (6) (c), (7) (a) and (b)
- S. ATCP 10.62 (4) (c)
- S. ATCP 10.68 (2m)
- S. ATCP 10.73 (2m)
- S. ATCP 10.74 (1m)

Ch. ATCP 12

- S. ATCP 12.02 (4) (a)
- S. ATCP 12.03 (5) (a)
- S. ATCP 12.04 (4) (a)
- S. ATCP 12.045 (3) (a)

Commerce

Ch. Comm 4 (Entire Chapter)

Ch. Comm 5

- S. Comm 5.003 (10g), (26t), (27y) and (32s)
- S. Comm 5.004 (1)
- S. Comm 5.01 (4) (g)
- S. Comm 5.02 Table
- S. Comm 5.06 Table
- S. Comm 5.34 (1) and (4) (intro.)
- S. Comm 5.35 (1) and (5) (intro.)
- S. Comm 5.64
- Ss. Comm 5.990 to 5.999

Ch. Comm 18

- S. Comm 18.1004 (7) to (9)
- S. Comm 18.1006
- Ss. Comm 18.1007 to 18.1016
- S. Comm 18.1708 (8) (a), (b), and (9) (a)
- S. Comm 18.1810 (1)

Employee Trust Funds

Ch. ETF 10

- S. ETF 10.01 (7)

Ch. ETF 11

- S. ETF 11.16 (2) (c)

Ch. ETF 20

- Ss. ETF 20.14 to 20.18
- S. ETF 20.19 (2) (b) to (dm)
- S. ETF 20.35 (3) (d)

Ch. ETF 50

- S. ETF 50.50 (2) (b)

Financial Institutions

Ch. DFI-Gen 2 (Entire Chapter)

Health and Family Services

Ch. HFS 1

- S. HFS 1.01 (1) and (2) (j)
- S. HFS 1.02 (6) (d) and (f)
- S. HFS 1.03 (12) (c) and (21) (intro.)
- S. HFS 1.065

Ch. HFS 65

- S. HFS 65.02 (6) and (9)
- S. HFS 65.04 (1) (d)
- S. HFS 65.05 (7)

Ch. HFS 115

- S. HFS 115.04 (14)

Ch. HFS 149 (Entire Chapter)

Insurance

Ch. Ins 17

- S. Ins 17.01 (3)
- S. Ins 17.28 (6) (intro.), (k) to (n) and (q)

Natural Resources

Ch. NR 433 (Entire Chapter)

Ch. NR 484

- S. NR 484.04 (11m)

Transportation**Ch. Trans 101**

S. Trans 101.01

S. Trans 101.02 (1) (b), (2) (j) and (k), (3) (i), (4) (c), (5) (m), (mn) and (v), (6), (7), (8) and (9)

S. Trans 101.03

S. Trans 101.04 (1), (2), (3), (3m), (4), (5) and (6)

S. Trans 101.05

S. Trans 101.06

S. Trans 101.07 (1) (a) and (b), (2), (3), (5), (6) to (8), (9) and (10)

S. Trans 101.10 (2) (a)

Ch. Trans 131

S. Trans 131.01 (2)

S. Trans 131.02 (1m), (3), (4), (6), (6r), (8), (10), (11), (14), (16), (22), (25), (27), (30), (32), (33), (34) to

(35), (43), (47), (49), (50m), (53), (54) and (56m)

S. Trans 131.03 (1) (a), (c), (d), (2) (a), (b), (3) (d) and (h), (4), (5), (6) (a), (b), (c) and (d), (7) to (9), (10) (a), (b) and (d), (11) (a) and (g) to (i), (m) to (o), (12) and (13) (a) and (b) to (d), (14), (15) (a), (b) and (c)

S. Trans 131.04 (1) (a), (b) and (c), (2) (a) and (d)

S. Trans 131.05 (2) and (3)

S. Trans 131.07 (1)

S. Trans 131.09 (3)

S. Trans 131.11 (1) (a), (2) (a), (b) and (e)

S. Trans 131.12 (2) and (3)

S. Trans 131.13 (1) (a), (2), (5) (a) and (b) and (6) (c)

S. Trans 131.14 (1), (2) (a), (4) and (5) (f)

S. Trans 131.16 (2) (b) and (c) and (3)

Ch. Trans 178 (Entire Chapter)**Editorial Corrections**

Corrections to code sections under the authority of s. 13.92 (4) (b), Stats., are indicated in the following listing.

Commerce**Ch. Comm 5**

S. Comm 5.9905

S. HFS 1.06 (2) (d)

S. HFS 1.07 (1)

Government Accountability Board**Ch. GAB 6 (Entire Chapter)****Transportation****Ch. Trans 101**

S. Trans 101.02 (8) (a)

Health and Family Services**Ch. HFS 1**

S. HFS 1.05 (10) (d)

Sections Affected by Corrections Not Published

Corrections under s. 13.92 (4) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Legislative Reference Bureau Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

| Location of invalid cross-reference | Invalid cross-reference | Correction |
|-------------------------------------|--|---|
| NR 440.642 (9) (a) | sub. (7) (b), (c), (e), (f) 2. or 3. or (g) 2. | sub. (7) (b), (e), (f) 2. or 3. or (g) 2. |
| NR 440.642 (9) (c) | sub. (7) (b), (c), (e), (f) 1. or 3. or (g) 1. or 2. | sub. (7) (b), (e), (f) 1. or 3. or (g) 1. or 2. |
| NR 440.642 (9) (d) 1. | sub. (7) (b) or (c) | sub. (7) (b) |
| DWD 274.07 | 101.02, Stats. | 103.005, Stats. |

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 255. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff on Memorial Day.

Executive Order 256. Relating to a Proclamation Declaring a State of Emergency.

Executive Order 257. Relating to a Proclamation of a State of Emergency Relating to the Permitting of Replacement Bridges and Culverts.

Executive Order 258. Relating to a Proclamation of a State of Emergency Relating to the Inspection of Dams.

Executive Order 259. Relating to a Proclamation of Law Enforcement Status for the Wisconsin National Guard Drug Control Program for Asset Sharing Purposes.

Public Notices

Health and Family Services

*Medicaid Reimbursement for Inpatient Hospital Services:
Acute Care Hospitals, Children's Hospitals, Major Border Status Hospitals,
Non State Public and Private Psychiatric Hospitals
State of Wisconsin Medicaid Payment Plan for State Fiscal Year 2008–2009*

The State of Wisconsin reimburses hospitals for inpatient hospital services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and Chapter 49 of Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medicaid or Medical Assistance.

Under the current Medicaid Inpatient Hospital State Plan, effective July 1, 2007, the rate-setting methodology for Acute Care, Major Border Status and Children's Hospitals is a provider specific, cost based DRG payment system adjusted by case mix. Additional payments are made to eligible disproportionate share and rural hospitals and outlier payments are made for high-cost cases. Payments are adjusted as necessary to ensure budget compliance. Non State Public and Private Psychiatric and Rehabilitation Hospitals are paid on a provider specific, cost based per diem rate adjusted as necessary to ensure budget compliance.

The Department is proposing to implement a rate setting methodology change for inpatient hospital services for Acute Care Hospitals, Children's Hospitals, Non State Public and Private Psychiatric Hospitals, and Major Border Status Hospitals. The proposed change reverts the payment methodology back to the methodology in place during State Fiscal Year 2006–2007. Under this methodology, each hospital will be assigned a unique hospital specific DRG base rate. This rate includes adjustments for differences in wage levels, includes an amount for capital expenditures, and payment enhancements for qualifying Disproportionate Share Hospitals, Rural Hospitals and facilities with Graduate Medical Education programs. In addition, a cost outlier payment will be made when the cost of providing services exceeds a pre-determined tripoint. Payment rates will be adjusted as necessary to ensure budget compliance, using a statewide base rate as the starting point of the rate setting process. The Department intends to modify the inpatient rate setting methodology to implement these Medicaid rate changes with an effective date of July 1, 2008.

The Department also proposes to clarify the source of funding, definition of eligible cost, payment methodology, and timing of payments associated with the General Assistance Disproportionate Share Hospital (GA-DSH) Allowance described in section 8300 of the current State Plan. Changes to the GA-DSH program would have an effective date of July 1, 2008.

Proposed Change

The State Budget approved by the Wisconsin Legislature does not provide an increase in rates for inpatient services provided by hospitals. Proposed changes to the General Assistance Disproportionate Share Hospital program do not increase expenditures beyond the current state fiscal year 2008–2009 GA-DSH allotment. It is estimated that these changes will have no impact on annual aggregate Medicaid expenditures in state fiscal year 2008–09.

The Department's proposals involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be July 1, 2008.

Copies of the Proposed Change

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

Regular Mail

Division of Health Care Financing
P.O. Box 309
Madison, WI 53701-0309

Phone

Curtis Cunningham, Section Chief
Hospital Rate Setting
(608) 261-6858

Fax

(608) 266-1096
Attention Curtis Cunningham

Email

CunniCJ@dhfs.state.wi.us

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

Written Comments

Written comments are welcome. Written comments on the proposed change may be sent by FAX, email, or regular mail to the Division of Health Care Financing. The FAX number is (608) 266-1096. The email address is CunniCJ@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.