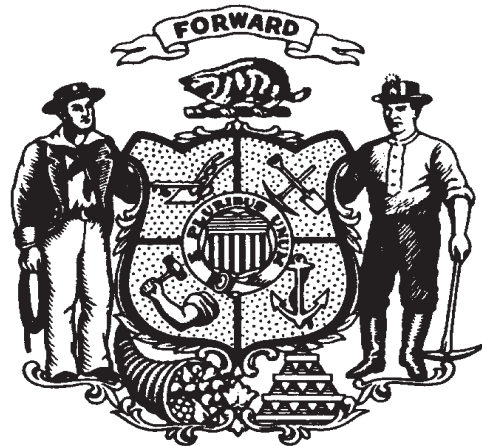


Wisconsin Administrative Register

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New Material

Agriculture, Trade and Consumer Protection:	Introduction Page (Vol. 2); Table of Contents (Vol. 2); Pages 811 to 822; 823 to 824; 837; 839 to 840
Natural Resources:	<i>Fish, Game, etc., Chs. NR 1—</i> Pages 387 to 400–2 <i>Environmental Protection—Water Regulation, Chs. NR 300—</i> Introduction Page; Pages 85 to 88–2 <i>Environmental Protection—Air Pollution Control, Chs. NR 400—</i> Pages 17 to 26–6; 27 to 36–1; 37 to 56–22; 57 to 64–6, 451 to 472–10; 551 to 560–6
Public Instruction:	Table of Contents; Page 88–1
Workforce Development:	<i>Family Supports, Chs. DWD 12–59</i> Pages 73 to 78 <i>Unemployment Insurance, Chs. DWD 100–150</i> Pages 1 to 3; 47 to 51; 65 to 66–2
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Instructions for Inserting New Material in the Wisconsin Administrative Code

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(Formerly Workforce Development)***Family Supports, Chs. DWD 12–59***Amends s. DWD 56.08 (1) and (2) and repeals and recreates Table DWD 56.08, relating to child care copayments and affecting small businesses. **EmR0806**Repeals emergency rule EmR0807, relating to child care enrollment underutilization. **EmR0814**Creates ss. DWD 40.02 and 40.05 and DWD 40 Appendix D, relating to the establishment of birth cost orders based on child support guidelines. **EmR0821**

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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade & Consumer Protection (2)

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

Exemption From Finding of Emergency

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

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

2. **EmR0822** – Rules adopted revising **Ch. ATCP 10**, relating to diseases of fish and farm-raised deer.

Finding of Emergency

(1) The Wisconsin department of Agriculture, Trade and Consumer Protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including programs to control diseases of fish and farm-raised deer.

Disease Testing of Fish

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

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

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

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

Disease-Free Herd Certification of Farm-Raised Deer Herds

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

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

Publication Date: July 9, 2008
Effective Date: July 9, 2008
Expiration Date: December 6, 2008
Hearing Date: August 1, 2008

Children and Families (3)

(Formerly Workforce Development)

Family Supports, Chs. DWD 12 to 59

1. **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

2. **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

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

Finding of Emergency

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

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

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

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

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 (2)

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

1. **EmR0802** – Creating **Ch. Comm 132**, relating to implementing a program for certifying applicants and

allocating dairy manufacturing facility investment tax credits, and affecting small businesses.

Finding of Emergency

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

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

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

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

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

Publication Date: February 4, 2008

Effective Date: February 4, 2008

Expiration Date: July 3, 2008

Hearing Date: May 14, 2008

Extension Through: September 1, 2008

Note: The extension date was incorrectly stated in the Mid–July 2008 Register.

- EmR0823** – Rules adopted amending **Comm Table 108.6–1, sections Comm 108.07 (5), 108.22 (1), and 154.06 (intro.)**, relating to emergency assistance grants in the community development block grant program, 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 health, safety, and welfare. The facts constituting the emergency are as follows.

Currently under sections Comm 108.06, 108.07, and 108.22 of the Wisconsin Administrative Code, as promulgated under sections 560.04, 560.045, and 560.9809 of the Statutes, the Department may annually use up to 5 percent of its federal Community Development Block Grant (CDBG) funds to repair or replace public infrastructure or facilities, or for emergency services necessitated by a natural disaster or catastrophic event. Also under sections Comm 108.07 and 108.22, the maximum amount of CDBG funds that the Department can award to any local government for a natural disaster or catastrophic event is \$500,000.

Currently under section Comm 154.06, as promulgated under sections 560.02 (4) and 560.9809 (2) of the Statutes, the Department may annually use up to \$2,000,000 of CDGB funds to address emergency housing needs caused by natural disasters or catastrophic events.

Because of the unprecedented levels of damage to public infrastructure and facilities from the severe storms and widespread flooding that occurred throughout the State in June 2008, the need for emergency assistance to communities far exceeds the \$1.35 Million of CDBG funding that results from the above 5–percent limit, and the need for emergency housing assistance for low and moderate income households far exceeds the above \$2,000,000. Communities and households in 28 of the 30 counties where the Governor has declared a state of emergency are eligible for this CDBG program assistance.

This emergency rule repeals the above limits of 5 percent, \$500,000 and \$2,000,000. This will enable the Department to (1) use any available CDBG funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding; and (2) base the award amounts on the scope of the damages and destruction in the community and on the funds available.

Publication Date: July 16, 2008

Effective Date: July 16, 2008

Expiration Date: December 16, 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

Health Services

(Formerly 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 (4)

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

Finding of Emergency

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

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

Publication Date: January 30, 2008
Effective Date: January 30, 2008
Expiration Date: June 28, 2008
Hearing Dates: March 18 and 21, 2008
Extension Through: August 26, 2008

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

Finding of Emergency

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

The 4-year-old kindergarten grant program under s. 115.445, Stats., was created under 2007 Wisconsin Act 20.

The Act became effective October 27, 2007, and appropriated \$3 million annually beginning in the 2008–09 school year. In order for school districts to develop application criteria and procedures in time for the program to operate in the upcoming school year, rules must be in place as soon as possible.

Publication Date: February 25, 2008
Effective Date: February 25, 2008
Expiration Date: July 24, 2008
Hearing Date: April 17, 2008
Extension Through: September 20, 2008

3. **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

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

Finding of Emergency

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

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

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

Regulation and Licensing (2)

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

Finding of Emergency

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

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

Publication Date: April 16, 2008
Effective Date: April 16, 2008
Expiration Date: September 13, 2008
Hearing Date: June 26, 2008

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

Finding of Emergency

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

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

Revenue

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

Exemption From Finding of Emergency

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

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

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

Transportation

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

Scope Statements

Health Services

(Formerly Health and Family Services)

Mgmt. & Technology & Strategic Finance, Chs. HFS 1—

Subject

Revise section HFS 10.56, relating to continuation of services pending the outcome of a grievance, department review, or fair hearing requested by an individual whose Family Care services have been terminated or reduced.

Policy Analysis

Currently, individuals may appeal department decisions terminating or reducing Family Care services, including under circumstances where the termination or reduction in services is the result of an act of the federal government or the state legislature. Continuation of services that have been terminated or reduced by an act of law will be counter-productive to the welfare of the appellant. The appellant will lose the appeal and be responsible for the cost of the continued services.

To avoid these situations, the Department intends to revise s. HFS 10.56, to remove enrollees' right to continuation of services pending the outcome of a grievance, Department review, or fair hearing in circumstances where the reduction or termination the Family Care benefit is reduced or eliminated by an act of the federal government or the state legislature, and the individual does not dispute that he or she falls within the category of individuals for whom the benefit was reduced or terminated.

Statutory Authority

Sections 46.286 (3) (a) and 227.11 (2), Stats.

Entities Affected by the Rule

Individuals currently enrolled in the Family Care program under non-Medicaid eligibility and Care management organizations.

Comparison with Federal Regulations

There is a similar provision in Medicaid rules at 42 CFR § 431.230(a). The language of (a)(1) permits the action being challenged in a fair hearing to take effect immediately if the sole legal issue presented by the challenge is one of federal or state law or policy. Like the proposed change in the Family Care rules, under the federal rule an eligibility termination is not stayed pending the outcome of an appeal if the termination is based solely on a change in law, and the facts relevant to eligibility are not in dispute.

Estimate of Time Needed to Develop the Rule

8 hours

Health Services

(Formerly Health and Family Services)

Health, Chs. HFS 110—

Subject

Revises Chapters HFS 110, 111, 112, and 113, relating to emergency medical technicians, first responders, and providers of instruction of automated external defibrillators.

Policy Analysis

2007 Act 104 requires the department to promulgate rules that require emergency medical technicians, first responders, and individuals who provide instruction to emergency medical technicians and first responders to complete training on the use of automated external defibrillators. Act 104 also requires the department to specify, in rules, the content of the training, qualifications of providers, and frequency with which training is to be completed.

Emergency medical services professionals already generally receive instruction on the use of automated external defibrillators as part of their standard training and certification. Specific requirements, however, are not in administrative rules.

The department may promulgate the rules required under Act 104 under the emergency rulemaking process as permitted under Act 104. If the department uses the emergency rules process, the department will also promulgate the rules as permanent rules.

Statutory Authority

Section 146.50 (9m), as created by 2007 Act 104, and section 227.11 (2), Stats.

Entities Affected by the Rule

EMTs; EMT providers; first responders; providers of instruction of automated external defibrillators, including the American Red Cross, American Heart Association, Medic First Aid, and the American Academy of Orthopaedic Surgeons.

Comparison with Federal Regulations

There appears to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rules.

Estimate of Time Needed to Develop the Rule

Approximately 80 hours. The department may use the resources of the American Red Cross, American Heart Association, Medic First Aid, and the American Academy of Orthopaedic Surgeons in the development of the proposed rules.

Labor and Industry Review Commission

Subject

Revise section LIRC 1.025, relating to facsimile transmission of appeals; and sections LIRC 2.05, 3.05, and 4.04, relating to venue in actions for judicial review in which the plaintiff or petitioner is a non-resident of Wisconsin.

Objective of the Rule

Make the LIRC rule on faxed petitions for commission review conform with the ERD rule as to petitions in equal rights cases.

Correct the rules regarding judicial review from LIRC decisions when the plaintiff or petitioner lives outside of Wisconsin.

Policy Analysis

The current rule allows petitions for commission review from decisions by administrative law judges of the Department of Workforce Development to be filed by facsimile transmission. Under the rule, petitions faxed and received on a given day are considered to have been received on that day, for purposes of determining timeliness, even if they are received after regular office hours. The LIRC rule conflicts with the rule of the DWD Equal Rights Division (ERD), which treats faxed documents received after regular

office hours as having been received on the next business day. The ERD rule applies, because ERD is the only authorized entity to accept petitions for commission review from ERD decisions. Thus, the LIRC rule may be misleading as to the requirements for timely filing faxed petitions in equal rights cases.

The current rules regarding judicial review erroneously state that out of state plaintiffs or petitioners should commence actions for judicial review in Dane County. Statutory changes have provided that actions for judicial review by out of state plaintiffs or petitioners shall be commenced in the county where the claim or dispute arose (801.50(2)(a) and 227.53(1)(a)3.).

Statutory Authority

Section 103.04 (2), Stats.

Entities Affected by the Rule

Parties in contested cases before the DWD Equal Rights Division and parties wishing to appeal LIRC decisions to circuit court.

Comparison with Federal Regulations

Not applicable

Estimate of Time Needed to Develop the Rule

40 hours

Submittal of Rules to Legislative Council Clearinghouse

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

Financial Institutions *Wisconsin Consumer Act* **CR 08–071**

On July 10, 2008, the Department of Financial Institutions submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates section DFI–WCA 1.84, relating to unconscionable conduct.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for August 14, 2008. The Division of Corporate and Consumer Services is responsible for promulgation of the rule.

Contact Information

Mark Schlei
Deputy General Counsel
608–267–1705

Health Services (Formerly Health and Family Services) *Health, Chs. HFS 110—* **CR 08–073**

On July 14, 2008, the Department of Health Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters HFS 173, 175, 178, 195, 196, 197 and 198, relating to license and permit fee increases and the creation of new fees for restaurants, lodging, public pool and water attraction, body art and vending establishments.

Agency Procedure for Promulgation

Public hearings have been scheduled for August 11, 12, 13, 14 and 15, 2008.

Contact Information

For substantive questions on rules contact:

James Kaplanek, R.S.
Chief
Food Safety and Recreational Licensing Section
Bureau of Environmental and Occupational Health
608–261–8361
kaplajh@dhs.state.wi.us

Small Business Regulatory Review Coordinator:
Rosie Greer
608–266–1279
greerrj@dhfs.state.wi.us

Natural Resources *Fish, Game, etc., Chs. NR 1—* **CR 08–074**

On July 15, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter NR 40, relating to identification, classification and control of invasive species.

Agency Procedure for Promulgation

Public hearings are scheduled for August 14, 15, 19, 20 and 26, 2008. The Bureau of Endangered Resources is responsible for promulgation of the rules.

Contact Information

Kelly Kearns
Bureau of Endangered Resources
Kelly.Kearns@wisconsin.gov

Transportation **CR 08–072**

On July 9, 2008, the Department of Transportation submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates section Trans 117.03 (2) (n), relating to the occupational licensing program.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for August 15, 2008. The Division of Motor Vehicles, Bureau of Vehicle Services is primarily responsible for this rule.

Contact Information

Julie A. Johnson
Paralegal
608–267–3703

Rule-Making Notices

Notice of Hearing
Financial Institutions
Wisconsin Consumer Act
CR 08-071

NOTICE IS HEREBY GIVEN That pursuant to ss. 425.107 (2), 426.104 (1) (e), 426.108 and 227.11 (2), Stats., and interpreting s. 426.108, Stats., the Department of Financial Institutions, Division of Corporate and Consumer Services will hold a public hearing to consider a rule to create section DFI-WCA 1.84 relating to unconscionable conduct.

Hearing Date and Location

August 14, 2008 10:00 a.m.	Dept. of Financial Institutions 345 W. Washington Avenue 5 th floor Madison, Wisconsin
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Copies of Proposed Rule, Submission of Written Comments and Agency Contact Person

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency's internal processing of the proposed rule, contact:

Mark Schlei, Deputy General Counsel
 Department of Financial Institutions
 Office of the Secretary, P.O. Box 8861
 Madison, WI 53708-8861
 telephone (608) 267-1705
 e-mail mark.schlei@dfi.state.wi.us

A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

For substantive questions on the proposed rule, contact:

Cheryll Olson-Collins, Administrator
 Wisconsin Department of Financial Institutions
 Division of Corporate and Consumer Services
 P.O. Box 7846
 Madison, WI 53708-7846
 telephone (608) 266-6810
 e-mail cheryll.olsoncollins@dfi.state.wi

Analysis Prepared by the Department of Financial Institutions, Division of Corporate and Consumer Services

Statutes interpreted

Section 426.108, Stats.

Statutory authority

Sections 425.107 (2), 426.104 (1) (e), 426.108 and 227.11 (2), Stats.

Explanation of agency authority

Pursuant to chs. 421 to 427 and 429, Stats., the department administers the Wisconsin Consumer Act.

Related statute or rule

Section 425.107, Stats.

Summary of proposed rule

The objective of the rule is to create s. DFI-WCA 1.84. Pursuant to s. 426.108, Stats., the administrator of the Wisconsin Consumer Act shall promulgate rules declaring specific conduct in consumer credit transactions and the collection of debts arising from consumer credit transactions to be unconscionable and prohibiting the use of those unconscionable acts. The purpose of the rule is to set forth that it is an unconscionable and prohibited practice for any merchant to preclude a customer from asserting claims or seeking remedies available under the Wisconsin Consumer Act, including bringing, joining or participating in efforts to obtain class-wide relief.

Comparison with federal regulations

The department is aware of no such federal regulation.

Comparison of rules in adjacent states

The department is aware of no such rules.

Summary of factual data and analytical methodologies

The department reviewed factors the Wisconsin legislature set forth in s. 426.108, Stats., that the administrator of the Wisconsin Consumer Act shall consider in declaring specific conduct unconscionable and prohibited, as well as recent Wisconsin court rulings regarding unconscionability and class-relief (*Wisconsin Auto Title Loans, Inc. v. Jones*, 290 Wis. 2d 514 (2006) and *Coady et al v. Cross Country Bank et al*, 299 Wis. 2d 420 (2007)). Furthermore, in the department's experience, nearly all consumer credit transactions are contracts of adhesion, and creditors generally have greater bargaining power, business acumen and experience than consumers do. This can result in terms that are unreasonably favorable to merchants.

Initial Regulatory Flexibility Analysis

The rule imposes no new regulatory obligations or burdens on small business; therefore, the rule has no additional significant economic impact.

Fiscal Estimate

The rule's requirements place no additional duties or burdens on state or local government, and hence has no affect on costs to either.

Notice of Hearings

Health Services

(Formerly Health and Family Services)

Community Services, Chs. HFS 30—

CR 08-057

NOTICE IS HEREBY GIVEN that pursuant to sections 46.03 (18), 46.10 (1) to (14) (a), 51.44 (5) (a) and 227.11 (2), Stats., and interpreting section 51.44 (5), Stats., the Wisconsin Department of Health Services will hold public hearings to revise 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.

Hearing Date and Location

Date and Time	Location
August 13, 2008 3:00–6:00 p.m.	UW–Waukesha Room C103 1500 University Dr. Waukesha WI 53188 By Videoconference
August 13, 2008 3:00–6:00 p.m.	UW–Madison Pyle Center – Room 227 702 Langdon St. Madison WI 53706 By Videoconference
August 13, 2008 3:00–6:00 p.m.	UW–Menasha Fox Valley Room 1838 1478 Midway Rd. Menasha WI 54852 By Videoconference
August 13, 2008 3:00–6:00 p.m.	UW–LaCrosse Communications Bldg – Rm. 102 1725 State Street LaCrosse WI 54601 By Videoconference
August 13, 2008 3:00–6:00 p.m.	UW–Wausau Marathon County Room 218 518 S 7 th Avenue Wausau WI 54401 By Videoconference

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication at a hearing difficult; you require an interpreter or a non-English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Submission of Written Comments

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>.

The deadline for submitting comments to the Department is 4:30 p.m. on August 13, 2008.

Copies of Proposed Rules

A copy of the full text of the rules and the fiscal estimate can be obtained at no charge from the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> or by contacting the person listed below.

Agency Contact Person

Carol Eichinger
Department of Health Services/Birth to 3 Program
1 W Wilson Street, Room 418
PO Box 7851
Madison WI 53707
Carol.Eichinger@wisconsin.gov
608/267–3270

Small Business Regulatory Coordinator

Rosie Greer
Greerrj@dhs.state.wi.us
608–266–1279

Analysis Prepared by the Department of Health Services**Statutes interpreted**

Sections 51.44 (5), Stats.

Statutory authority

Sections 46.03 (18), 46.10 (1) to (14) (a), 51.44 (5) (a), and 227.11 (2), Stats.

Explanation of agency authority

- Section 46.03 (18), Stats., requires the Department to establish a uniform system of fees for services provided or purchased by the Department, or a county department under s. 46.215, 46.22, 51.42, or 51.437, Stats.
- Section 46.10 (1) to (14) (a), Stats., establishes parental liability for services provided or purchased by the Department or county department to their minor children and requires fees for services received by minor children to be paid in accordance with the fee schedule established by the Department. Section 46.10 (1) to (14) (a) also establishes requirements for fee collection.
- Section 51.44 (5) (a) Stats., requires the Department to promulgate rules for the statewide implementation of the early intervention services program.
- Section 227.11 (2), Stats., provides state agencies with general rulemaking authority.

Related statute or rule

See the “Statute interpreted” section

Plain language analysis

Families with children who have functional needs receive services from a number of programs implemented by county human and social services agencies. These programs include early intervention services for children from birth to 3 with developmental needs; the family support program; the community options program; the children’s home- and community-based service waivers; various locally funded services such as respite care and community inclusion activities for children; and other children’s; long term support programs.

Federal, state, and county funds pay a portion of the costs for these services. Parents of children who receive these services also pay a portion of these costs. Parents of children who receive early intervention services are required under s. 51.44 (5) (a), Stats., and s. HFS 90.06 (2) (i) to pay a portion of these costs as assessed by the county providing services. Counties have determined that implementing the early intervention services and other children’s long term support services under three different payment systems, used by the various programs listed in the above paragraph, is administratively and fiscally burdensome. In addition, the Department has determined that the current system for calculating the parental payment limits for early intervention services results in families not paying a fee in proportion to their incomes and services received.

To decrease the burden on county agencies in implementing the various services for children who have functional needs, and to ensure that families, in proportion to their incomes, share in the costs of their child’s services, the

Department proposes to permit counties to use the schedule established under s. HFS 1.03 (13m) to assess parental payments limits for early intervention program services. Except for early intervention core services, such as service coordination and evaluation, the proposed consolidation and change may result in an increase in costs to families receiving early intervention services due to the change in the process for calculating the parents' share of costs. The current parental payment limits for early intervention services range between \$300 to \$1,800 per year based on family annual income and family size relative to federal poverty guidelines. The new calculation will continue to be based on family annual income and family size relative to federal poverty guidelines, but the parental payment limits will also be a percentage of actual costs for services based on the family's income and size instead of a flat fee. Under the proposed schedule, parental payments will be assessed for families at or above 330% of the federal poverty level, beginning at 1% of service costs and can progress up to 41% of service costs for families at 1580% or greater of the federal poverty level. Parental payments would not be collected from families who have annual incomes below 330% of the federal poverty level.

The parental payment limits would be determined by counties after calculating the parent's annual gross income, adjusted by a standard allowance; or actual medical or dental expenses claimed on the parent's federal income tax form Schedule A, whichever is higher, the family's poverty level for the family size, and the child's individual family service plan costs. Families continue to have the option of allowing their private insurance companies to be billed for the payment of therapy services provided.

Overall, the proposed rule would result in parents paying in proportion to their income levels and individual family service plan costs. For counties serving families with children with functional needs, participating in either early intervention or other children's long term support services, a unified system for calculating parental payments would be implemented.

The proposed rule would not result in a loss of services nor any changes to services to families.

The chart below shows the percentage of service plan costs, based on the federal poverty level, that parents may be assessed by counties under ch. HFS 1.

Adjusted Gross Income (% of FPL)			Percentage of Service Plan Cost
Less than 300% FPL			0.0%
330%	to less than	355%	1.0%
355%	to less than	380%	1.8%
380%	to less than	405%	2.6%
405%	to less than	430%	3.4%
430%	to less than	455%	4.2%
455%	to less than	480%	5.0%
480%	to less than	505%	5.8%
505%	to less than	530%	6.6%
530%	to less than	555%	7.4%
555%	to less than	580%	8.2%
580%	to less than	605%	9.0%
605%	to less than	630%	9.8%
630%	to less than	655%	10.6%
655%	to less than	680%	11.4%
680%	to less than	705%	12.2%
705%	to less than	730%	13.0%
730%	to less than	755%	13.8%

755%	to less than	780%	14.6%
780%	to less than	805%	15.4%
805%	to less than	830%	16.2%
830%	to less than	855%	17.0%
855%	to less than	880%	17.8%
880%	to less than	905%	18.6%
905%	to less than	930%	19.4%
930%	to less than	955%	20.2%
955%	to less than	980%	21.0%
980%	to less than	1005%	21.8%
1005%	to less than	1030%	22.6%
1030%	to less than	1055%	23.4%
1055%	to less than	1080%	24.2%
1080%	to less than	1105%	25.0%
1105%	to less than	1130%	25.8%
1130%	to less than	1155%	26.6%
1155%	to less than	1180%	27.4%
1180%	to less than	1205%	28.2%
1205%	to less than	1230%	29.0%
1230%	to less than	1255%	29.8%
1255%	to less than	1280%	30.6%
1280%	to less than	1305%	31.4%
1305%	to less than	1330%	32.2%
1330%	to less than	1355%	33.0%
1355%	to less than	1380%	33.8%
1380%	to less than	1405%	34.6%
1405%	to less than	1430%	35.4%
1430%	to less than	1455%	36.2%
1455%	to less than	1480%	37.0%
1480%	to less than	1505%	37.8%
1505%	to less than	1530%	38.6%
1530%	to less than	1555%	39.4%
1555%	to less than	1580%	40.2%
1580% and above			41.0%

Note: The federal poverty guidelines are adjusted yearly by the federal Office of Management and Budget under 42 USC § 9902 (2) and are published annually in the Federal Register. The federal poverty guidelines and the CLTS Parental Payment Limit Worksheet are distributed annually by the Department to counties for use in calculating the parental payment limit. To receive the current federal poverty guidelines and the CLTS Parental Payment Limit Worksheet, contact the Children's Services Section, at the Division of Long Term Care, P.O. Box 7851, Madison, WI 53707-7851, or call 608-261-78208276, or fax 608-261-8884 or visit the Department's website at <http://dhfs.wisconsin.gov/bdds/clts/index.htm>

Comparison with federal regulations

The Individuals with Disabilities Education Act (20 USC § 1432 et.seq.) allows states to create a system of payments for families. Federal Regulations at 34 CFR §§ 303.520 and 303.521 provide policies related to payment for early intervention services. Under the federal regulations, the Department is responsible for establishing policies relating to how services to eligible children and their families will be paid for under the Wisconsin's early intervention program. The Department is required to specify the functions and services that will be provided at no cost to all parents; the functions or services that are subject to a system of payments; the payment system and schedule of sliding fees that will be used; the basis and amount of payments; and an assurance that the inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family. The federal requirements are currently met

under ch. HFS 90, and will continue to be met under the proposed order.

Comparison of rules in adjacent states

Illinois: Rules for early intervention services in Illinois are under 89 Ill. Adm. Code 500. The fees are set on a sliding fee schedule similar to that proposed under this order, with the exception that under the proposed order parental payments would be based on annual service plan costs in addition to federal poverty level family size and income guidelines. Illinois' fee schedule is based strictly on the federal poverty level size and income guidelines with fees starting at 185% of the federal poverty level. Parental payments under this proposed order would begin at 330% of federal poverty level.

Parental payments under the Illinois system is collected in monthly fee installments from \$10.00 – \$200.00. Under this proposed order, parental payments would also be collected in monthly installments, and for some families may be higher than currently paid because payments are based on federal poverty level size and income guidelines and annual service plan costs. Parents would be assessed monthly payments from 1% to 41% of the cost of the plan depending on their family size and income under federal poverty level guidelines.

Iowa: There are no proposed or existing state regulations that include a family system of payment for the Birth to Three Program in Iowa.

Michigan: There are no proposed or existing state regulations that include a family system of payment for the Birth to Three Program in Michigan.

Minnesota: There are no proposed or existing state regulations that include a family system of payment for the Birth to Three Program in Minnesota.

Summary of factual data and analytical methodologies

The proposed rule is the result of Department consultations over several years with Governor-appointed Interagency Coordinating Council, an advisory committee to the Department. The committee consists of public and private providers, parents, public members, and representatives from Head Start, the Office of Commissioner of Insurance, the Department of Public Instruction, the Department of Workforce Development, Early Intervention Preparation, county government, Council of Developmental Disabilities, and the Wisconsin legislature.

Initial Regulatory Flexibility Analysis

The proposed rule would not affect businesses.

Fiscal Estimate

Families with children who have functional needs receive services from a number of programs implemented by county human and social services agencies. These programs include early intervention services for children from birth to 3 with developmental needs; the family support program; the community options program; the children's home and community based services waivers; various locally funded services such as respite care and community inclusion activities for children; and other children's long term support programs.

Federal, state, and county funds pay a portion of the costs for these services. Parents of children who receive these services also pay a portion of these costs. Parents of children who receive early intervention services are required s. under s. 51.44 (5) (a), Stats., and s. HFS 90.06 (2) (i) to pay a portion of these costs as assessed by the county providing services. Counties have determined that implementing the early

intervention services and other children's long-term support services under three different payment systems, used by the various programs listed in the above paragraph, is administratively and fiscally burdensome. In addition, the Department has determined that the current system for calculating the parental payment limits for early intervention services results in families not paying a fee in proportion to their incomes and services received.

To decrease the burden on county agencies in implementing the various services for children who have functional needs, and to ensure that families, in proportion to their incomes, share in the costs of their child's services, the Department proposes to permit counties to use the schedule established under s. HFS 1.03 (13m) to assess parental payments limits for early intervention program services. Except for early intervention core services, such as service coordination and evaluation, the proposed consolidation and change may result in an increase in costs to families receiving early intervention services due to the change in the process for calculating the parents' share of costs. The current parental payment limits for early intervention services range between \$300 to \$1,800 per year based on family annual income and family size relative to federal poverty guidelines. The new calculation will continue to be based on family annual income and family size relative to federal poverty guidelines, but the parental payment limits will also be a percentage of actual costs for services based on the family's income and size instead of a flat fee. Under the proposed schedule, parental payments will be assessed for families at or above 330% of the federal poverty level, beginning at 1% of service costs and can progress up to 41% of service costs for families at 1580% or greater of the federal poverty level. Parental payments would not be collected from families who have annual incomes below 330% of the federal poverty level.

The parental payment limits would be determined by counties after calculating the parent's annual gross income, adjusted by a standard allowance; or actual medical or dental expenses claimed on the parent's federal income tax form Schedule A, whichever is higher, the family's poverty level for the family size, and the child's individual family service plan costs. Families continue to have the option of allowing their private insurance companies to be billed for the payment of therapy services provided.

The amount of the annualized payments collected by counties under the proposed rule is indeterminate due to a number of variables that are difficult to quantify. Under the proposed rules, counties could collect higher parental payments from families who have incomes at or above 330% of the FPL, because the payment limits would be determined in proportion to the costs of the child's service plan, family size, and income level, instead of being capped at \$1,800 per year regardless of plan costs and family income. At the same time, counties would collect no payments from families whose incomes are below 330% of the FPL. Parental payments for early intervention services are currently collected beginning at 250% of the FPL.

Counties would not incur additional costs associated with implementing the proposed change, since counties already have the staff expertise and appropriate calculation tables from the Department needed to determine parental payment limits. The proposed order, in general, would provide a unified system for counties calculating parental payments for services to children with functional needs, which should help to reduce counties' administrative costs. The proposed rules would not have a fiscal effect on the Department. The proposed rules do not affect businesses. The proposed rules

would not result in a loss of services nor any changes to services to families.

Notice of Hearings

Health Services

(Formerly Health and Family Services)

Health, Chs. HFS 110—

CR 08–073

NOTICE IS HEREBY GIVEN that the Wisconsin Department of Health Services will hold public hearings relating to proposed revisions to Chapters HFS 173, 175, 178, 195, 196, 197 and 198, relating to creating and increasing fees for tattooing and body piercing establishments, recreational and educational camps, campgrounds, hotels, motels, and tourist rooming houses, restaurants, bed and breakfast establishments, vending of food, and affecting small businesses.

Hearing Information

Date and Time	Location
August 11, 2008 10:00 am to 2:00 pm	Western Regional Office Conference Room 123 610 Gibson Street Eau Claire, WI 54701
August 12, 2008 10:00 am to 2:00 pm	Northern Regional Office Conference Room 2187 North Stevens Street Suite C Rhineland, WI 54501
August 13, 2008 10:00 am to 2:00 pm	Northeastern Regional Office Conference Room 200 North Jefferson Street, Room 152A Green Bay, WI 54301
August 14, 2008 10:00 am to 2:00 pm	Southeastern Regional Office Conference Room 819 North 6 th Street, Room 40 Milwaukee, WI 53202
August 15, 2008 10:00 am to 2:00 pm	Wis. Dept. of Health Services 1 W. Wilson Street Room B155 Madison, WI 53703

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication at a hearing difficult; you require an interpreter or a non-English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Submission of Written Comments

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>.

The deadline for submitting comments to the Department is 4:30 p.m. on August 15, 2008

Copies of Rules and Fiscal Estimate

A copy of the full text of the rules and the fiscal estimate can be obtained at no charge from the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> or by contacting the person listed below.

Agency Contact Person

James Kaplanek, R.S
Chief
Food Safety and Recreational Licensing
James.kaplanek@wisconsin.gov
608–261–8361

Small Business Regulatory Coordinator

Rosie Greer
Greerj@dhfs.state.wi.us
608–266–1279

Analysis Prepared by Department of Health Services

Statute interpreted

Sections 250.04, 250.041, 252.23, 252.24, 252.241, 252.25, 252.245, 254.47, 254.015, 254.61, 254.62, 254.64, 254.65, 254.67, 254.68, 254.69, 254.70, 254.71, 254.272, 254.74, 254.85, 254.86, 254.87, and 254.88, to 254.88, Stats.

Statutory authority

Sections 227.11 (2) (a), 250.04 (1), (2) (a), and (7), 252.23 (4), 252.24 (4), 254.47 (4), 254.64, 254.65, 254.68, 254.74 (1) (d), 254.71 (6), 254.85, 254.86, and 254.88.

Explanation of agency authority

Section 227.11 (2) (a), Stats., provides the department, as a state agency, with general rulemaking authority interpreting the provisions of any statute enforced or administered by the department, if the department considers it necessary to effectuate the purpose of the statute. Section 250.04 (1) (2) (a), and (7), Stats., designates the department as having general responsibility for the public's health, gives the department all powers necessary to fulfill its duties, and authorizes the department to enforce and promulgate rules and orders governing the duties of local public health departments that effect public health. Additional authority to promulgate the proposed rules is as follows:

- *Tattooists and tattoo establishments:* Section 252.23 (2), Stats., requires the department to provide statewide licensing and regulation of tattooists and tattoo establishments, and to inspect a tattoo establishment before issuing a license to the establishment, and authorizes the department to conduct additional inspections as determined necessary by department. Section 252.23 (4) (a) and (b), Stats., requires the department to establish by rule standards and procedures, including fee payments to offset the cost of licensing tattooists and tattoo establishments, for the annual issuance of licenses as tattooists or as tattoo establishments to applicants, and the standards for the performance of tattoos by licensed tattooists and the maintenance of licensed tattoo establishments. Section 252.245 (1) and (4), Stats., authorizes the department to grant agent status to certain local health departments for issuing licenses to and making investigations or inspections of tattooists and tattoo establishments and permits local health departments with agent status to establish separate fees for licensure, including fees for pre-inspections. Chapter HFS 173 are the department's regulations authorized under 252.23 (2) and (4) (a) and (b) and 252.245 (1) and (4), Stats., for tattooists and tattoo establishments.

- *Body piercing and body piercing establishments:* Section 252.24, (2), Stats., requires the department to provide statewide licensing and regulation of body piercers and body piercing establishments and to inspect a body piercing establishment before issuing a license to the establishment, and authorizes the department to conduct additional inspections as determined necessary by department. Section 252.24 (4) (a) and (b), Stats., requires the department to establish by rule standards and procedures, including fee payments, to offset the cost of licensing body piercers and body piercing establishments, for the annual issuance of licenses as body piercers or as body piercing establishments to applicants, and the standards for the performance of body piercing by licensed body piercers and the maintenance of licensed body piercing establishments. Section 252.245 (1) and (4), Stats., authorizes the department to grant agent status to certain local health departments for issuing licenses to and making investigations or inspections of body piercers and body piercing establishments and permits local health departments with agent status to establish separate fees licensure, including fees for pre-inspections. Chapter HFS 173 are the department's regulations authorized under 252.24 (2) and (4) (a) and (b), Stats., for body piercers and body piercing establishments.
- *Recreational and educational camps:* Section 254.47 (1), Stats., authorizes the department to issue permits to and regulate recreational and educational camps, as defined under rules. Section 254.47 (1m), Stats., requires the department to conduct a pre-inspection before a permit is granted to a person intending to operate a new recreational or educational camp or to a person intending to be the new operator of an existing recreational or educational camp. Section 254.47 (4), Stats., requires the department to establish by rule, permit fees, pre-inspection fees, re-inspection fees, fees for operating without a permit, and late fees for untimely permit renewal. Section 254.69 (2) (am) and (d), Stats., authorizes the department to grant agent status to certain local health departments for issuing permits to and making investigations or inspections of recreational and educational camps and permits local health departments with agent status to establish separate fees licensure, including fees for pre-inspections. Section 254.85, (1) and (2), Stats., authorizes the department to enter the premises of recreational and educational camps to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed for enforcement of rules or statutes, and to issue orders to protect the public health safety and welfare. Section 254.86, Stats., authorizes the department to suspend, revoke, or refuse to issue a permit required under s. 254.47, Stats. Chapter HFS 175 are the department's regulations authorized under ss. 254.47 (1) and (4) and 254.69 (2), Stats., for recreational and educational camps.
- *Campgrounds:* Section 254.47 (1), Stats., authorizes the department to issue permits to and regulate campgrounds, as defined under rules. Section 254.47 (1m), Stats., requires the department to conduct a pre-inspection before a permit is granted to a person intending to operate a new campground or to a person intending to be the new operator of an existing campground. Section 254.47 (4), Stats., requires the department to establish by rule, permit fees, pre-inspection fees, re-inspection fees, fees for operating without a permit, and late fees for untimely permit renewal. Section 254.69 (2) (am) and (d), Stats., authorizes the department to grant agent status to certain local health departments for issuing permits to and making investigations or inspections of campgrounds and permits local health departments with agent status to establish separate fees licensure, including fees for pre-inspections. Section 254.85 (1) and (2), Stats., authorizes the department to enter the premises of campgrounds to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed for enforcement of rules or statutes and to issue orders to protect the public health safety and welfare. Section 254.86, Stats., authorizes the department to suspend, revoke, or refuse to issue a permit required under s. 254.47, Stats. Chapter HFS 178 are the department's regulations authorized under ss. 254.47 (1) and (4) and 254.69 (2), Stats., for campgrounds.
- *Hotels, motels, bed and breakfast, tourist rooming houses, restaurants, temporary restaurants, vending machines, and vending machine commissaries:* Section 254.68, Stats., require the department to establish by rule, permit fees, pre-inspection fees, re-inspection fees, fees for operating without a permit, and fees for untimely permit or license renewal. Section 254.69 (2) (am) and (d), Stats., authorizes the department to grant agent status to certain local health departments for issuing permits to and making investigations or inspections of hotels, bed and breakfast, tourist rooming houses, restaurants, temporary restaurants, and permits local health departments with agent status to establish separate fees licensure, including fees for pre-inspections. Section 254.71 (6) (a) and (c), Stats., requires the department to promulgate rules establishing a fee for certification and recertification of food protection practices to individuals and for issuing of certificates, including application, submittal and review. Section 254.74 (1) (a) and (d), Stats., requires the department to administer, enforce, and prescribe rules and standards for hotels, bed and breakfast establishments, tourist rooming houses, restaurants, temporary restaurants, vending machines, and vending machine commissaries. Section 254.85, (1), and (2), Stats., authorizes the department to enter the premises of lodging and food establishments to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed for enforcement of rules or statutes, and to issue orders to protect the public health safety and welfare. Section 254.86, Stats., authorize the department to suspend, revoke, refuse to issue a permit required under s. 254.68, Stats. Chapter HFS 195 are the department's regulations authorized under ss. 254.68, Stats., for hotels, motels, and tourist rooming houses. Chapter HFS 196 are the department's regulations authorized under ss. 254.68, 254.69, 254.71, 254.74, 254.85, 254.86, Stats., for restaurants. Chapter HFS 197 are the department's regulations authorized under ss. 254.68, 254.69, 254.71, 254.74, 254.85, 254.86, Stats., for bed and breakfast establishments. Chapter HFS 198 are the department's regulations authorized under ss. 254.68, 254.69, 254.71, 254.74, 254.85, 254.86, Stats., for vending machines and vending machine commissaries.

Related statute or rule

See "Statutes interpreted" section.

Plain language analysis

Before a person may operate a tattooing or body piercing establishment, recreational or educational camp,

campground, hotel, motel, tourist rooming house, bed and breakfast establishment, restaurant, vending machine, or vending machine commissary, the person is required by state law to have a permit or a license issued by the department. In addition, state law prohibits a person from being a tattooist or body piercer without a license, or operating or maintaining a restaurant unless the person or a manager holds a current, valid certified manager's certificate from the department.

The department's Food Safety and Recreational Licensing (FSRL) section conducts the licensing and permitting, inspection, and enforcement activities required under state law for practitioners and establishments regulated under chs. HFS 173, 175, 178, 195, 196, 197, and 198. In addition, FSRL staff conducts complaint investigations, and provide training and consultation activities to persons seeking a license or permit. As part of the department's general responsibility for oversight of public health, FSRL staff also routinely conducts inspections, without reimbursement, for state, local and private sector entities for activities that are not directly related to the department's regulatory responsibilities. Examples of special condition inspections include sanitation inspections of liquor establishments for liquor licenses, establishment pre-purchase compliance inspections for persons intending to purchase DHFS-regulated facilities, preliminary inspections of complex waterpark facilities, and food safety inspections at schools participating in the National School Lunch (NSLP) or School Breakfast Programs (SBP).

The activities conducted by FRSL staff are supported entirely by fee revenue paid by practitioners and persons licensed or applying to operate an establishment. The department does not receive general purpose revenue for its licensing, permitting, inspection, or enforcement activities. At current fee revenue levels, the Department projects a program deficit of \$699,540 in state fiscal year (SFY) 2009 that will increase to \$1,799,056 in SFY 2010.

To maintain revenue sufficient to conduct the department's public health regulatory activities, the department proposes to increase current fees, create new fees, and promulgate rules. In order to ease the impact of increased fees, the department is proposing a two-phase fee increase. An initial fee increase will go into effect in state fiscal year 2010 and a second, and generally smaller, fee increase will go into effect in SFY 2012. This two-phased fee increase approach should ensure that the FSRL program can operate without a deficit until 2014. The changes are as follows:

- HFS 173, relating to tattooing and body piercing establishments, the department proposes to increase license fees, pre-inspection fees, and practitioner fees and to create a re-inspection fee, a fee for late renewal, a fee for operating without a license, a fee for a duplicate license, and a fee for special condition inspections. The proposed rules include fee schedules, provisions clarifying the department's authority or a licensee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.
- HFS 175, relating to recreational and educational camps, the department proposes to increase permit, pre-inspection, and late renewal fees and to create a re-inspection fee, a fee for operating without a permit, and a fee for special condition inspections. The proposed rules include fee schedules, provisions clarifying the department's authority or a permittee's requirements

under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.

- HFS 178, relating to campgrounds, the department proposes to increase permit and late renewal fees and to create pre-inspection and re-inspection fees, a fee for operating without a permit, and a fee for special condition inspections. The proposed rules include fee schedules, provisions clarifying the department's authority or a licensee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.
- HFS 195, relating to hotels, motels, and tourist rooming houses, the department proposes to increase permit, pre-inspection, and late renewal fees and to create a re-inspection fee, a fee for operating without a permit, and a fee for special condition inspections. The proposed rules include fee schedules, provisions clarifying the department's authority or a permittee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.
- HFS 196, relating to restaurants, the department proposes to increase permit, pre-inspection, and late renewal fees and to create a re-inspection fee, a fee for operating without a permit, a fee for operating without a certified operator, and a fee for special condition inspections. In addition to proposed changes relating to fees, the department also proposes to modify ch. HFS 196 to revise the complexity rating formula under s. HFS 196.04 for restaurants that handle frozen pre-formed meat patties, chicken breasts, and breaded, chopped or comminuted meats. Specifically, the department intends to re-categorize entities that handle frozen pre-formed meat patties, chicken breasts, and breaded, chopped or comminuted meats to the same level that applies to raw meat handling. Entities that handle frozen and preformed meat patties, chicken breasts, or breaded, chopped or comminuted meats are currently categorized as less complex. Retail food service establishments are rated for complexity based on an evaluative formula. Entities that handle raw meat, poultry and seafood pose a greater risk for introducing food-borne contamination and, as such, have a higher level of complexity and an expectation for more frequent and detailed inspections. However, the department has determined through program evaluation that there is no discernable difference in risk between handling frozen pre-formed meats and raw poultry, meat or seafood. The revision of the risk-based complexity rating formula may, in some instances, result in higher fees. The proposed rules include fee schedules, provisions clarifying the department's authority or a permittee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.
- HFS 197, relating to bed and breakfast establishments, the department proposes to increase permit, pre-inspection, and late renewal fees; and to create a re-inspection fee, a fee for operating without a permit, and a fee for special condition inspections. In addition to modifying and creating fees, the department may update the rules as needed to ensure continued consistency between rules and current practice. The proposed rules include fee schedules, provisions clarifying the department's authority or a permittee's requirements under state law

relating to the initial and renewal application process, failure to pay fees, and enforcement.

- HFS 198, relating to vending of food, the department proposes to increase permit, pre-inspection, and late renewal fees; and to create a re-inspection fee, a fee for operating without a permit, and a fee for special condition inspections. In addition to modifying and creating fees, the department may update the rules as needed to ensure continued consistency between rules and current practice. The proposed rules include fee schedules, provisions clarifying the department’s authority or a permittee’s requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.

Comparison with federal regulations

There appear to be no proposed or existing federal regulations relating to fees or general operating requirements for the businesses operating.

Comparison of rules in adjacent states

Illinois: The State of Illinois has very little centralized environmental health regulatory infrastructure. Illinois has no state fee structure for providing environmental health regulatory services such as restaurant, lodging, or public pool inspections. Each local public health jurisdiction may create its own environmental health services fee structure. Given the different regional levels of affluence and local costs of living in Illinois, local environmental health regulatory fees vary widely. For this reason, it is difficult to compare Wisconsin’s state Food Safety and Recreational Licensing (FSRL) fees to similar fees in Illinois.

According to the Illinois Department of Public Health’s website (www.idph.state.il.us), “Currently, [the Illinois Department of Public Health] IDPH provides very limited direct environmental health services through some of its regional offices. IDPH staff only respond to complaints about food service establishments; no routine inspections are provided to promote quality food handling practices in restaurants.”

Iowa: In Iowa, food service establishments, lodging facilities, and vending machines are regulated by the Iowa Department of Inspections and Appeals’ Food and Consumer Safety Bureau. Pools and water attractions and tattooing and body piercing are regulated by the Iowa Department of Public Health.

Food Service Establishment Fees

The Iowa Department of Inspections and Appeals (IDIA) raised their environmental health service fees on July 1, 2007. The IDIA sets fees according to a food service establishment’s (restaurant’s) annual gross sales. According to Judy Harrison, Chief of the Food and Consumer Safety Bureau, food service establishments must provide proof (i.e. quarterly financial reports) of gross sales or they will be charged the highest fee.

Iowa and Wisconsin based their food service establishment fees structures on very different principles: food establishment annual gross sales versus risk of food-borne illness due to food preparation complexity. Iowa’s existing fee schedule and Wisconsin’s proposed schedule are presented side-by-side below. Although the basis for the fee schedules is quite different, Wisconsin’s proposed fees are in relatively the same range as Iowa’s fees for food service establishments.

Iowa’s 2007 Food Service Fee Schedule		Wisconsin’s Proposed Food Service Fee Schedule		
Food Service Establishment Annual Gross Sales	Fee	Food Service Establishment Type	Proposed SFY 2010 Fee	Proposed SFY 2012 Fee
\$1 to <\$50,000	\$67.50			
\$50,000 to <\$100,000	\$114.50	Restaurant, Pre-Packaged	\$90.00	\$105.00
\$100,000 to <\$250,000	\$236.25	Restaurant, Simple	\$195.00	\$230.00
\$250,000 to <\$500,000	\$275.00	Restaurant, Moderate	\$300.00	\$330.00
= \$500,000	\$303.75	Restaurant, Complex	\$430.00	\$540.00
Mobile Food Unit	\$27.00			
Temporary Food Establishment	\$33.50	Temporary Restaurant	\$150.00	\$170.00
Farmer’s Market	\$100.00			

Lodging Fees.

Iowa’s fees for lodging facilities are based on the number of guest rooms per facility. Iowa does not differentiate among tourist rooming houses (TRHs), bed and breakfasts (B&Bs) and hotels. Wisconsin sets different fees for TRHs, B&Bs and hotels. In Wisconsin, hotels have base fees with proposed additional, per-room fee. Although the different bases for Iowa’s and Wisconsin’s lodging fees make a comparison difficult, the respective current and proposed lodging fees are presented below.

Iowa’s 2007 Lodging Fee Schedule		Wisconsin’s Proposed Lodging Fee Schedule		
Number of Lodging Facility Guest Rooms	Fee	Lodging Type	Proposed SFY 2010 Fee	Proposed SFY 2012 Fee
1 – 15 Rooms	\$27.00	Bed and Breakfast	\$100.00	\$110.00
16 – 30 Rooms	\$40.50	Tourist Rooming House	\$120.00	\$135.00
31 – 75 Rooms	\$54.00			
76 – 149 Rooms	\$57.50	Hotel, 5 – 30 Rooms	\$165.00	\$205.00
=150 Rooms	\$101.25	Hotel, 31 – 99 Rooms	\$260.00	\$280.00
		Hotel, 100 – 199 Rooms	\$330.00	\$355.00
		Hotel, 200 + Rooms	\$400.00	\$490.00

Vending.

Iowa and Wisconsin take different approaches to ensuring the safety of food in vending machines – making a comparison of these fees very difficult. The respective food vending fees are as follows:

Iowa's 2007 Vending Fee Schedule		Wisconsin's Proposed Vending Fee Schedule		
Units	Fee	Unit or Vending Type	Proposed 2010 Fee	Proposed SFY 2012 Fee
Vending Machine (First Machine)	\$20.00	Vending Machine Commissary	\$230.00	\$280.00
		Vending Machine Storage	\$150.00	\$215.00
Each Additional Vending Machine	\$5.00	Vending Machine Operator	\$125.00	\$125.00
		Vending Machine Sticker	\$8.00	\$9.00

The department was not able to compare its fees for campground and recreational and educational camps with Iowa's fees.

Michigan: Michigan has no statewide structure or schedule for environmental health regulatory service fees. Similarly, Michigan state agencies do not provide environmental health services. Each local jurisdiction (typically county) in Michigan is required to have a local public health agency and each local agency must provide environmental health regulatory services. Fees are locally set. With each fee, a surcharge is remitted to the state for maintenance of a centralized office to provide oversight and technical support.

In Michigan, differing levels of affluence and local costs of living result in widely varying local fee structures. The State's annual surcharge fees are developed and are raised each year based on specific cost-of-living indexes. A letter, dated August 31, 2007, from the Michigan Department of Agriculture to all Local Health Departments detailed the 2008/2009 state adjustments to food service license fees. The state surcharges on local health departments fees will be as follows:

Michigan's 2008/2009 Additional State Fees ("Surcharges") onto Local Health Department Fees	
Pool or Pool Feature Type	Fee
Food Service Establishment	\$27.00
Food Service Establishment, Non-Profit [501(C)(3)]	\$0.00/\$5.00
Mobile Food Establishment	\$27.00
Mobile Food Commissary	\$27.00
Temporary Food	\$8.00
Temporary Food, Non-Profit [501(C)(3)]	\$5.00
Special Transitory Food Unit	\$40.00
Special Transitory Food Unit, Non-Profit [501(C)(3)]	\$5.00
Schools	\$27.00
Vending Machine Location	\$3.00

In Michigan, local public health agencies collect annual environmental health regulatory service license fees. The state surcharge is added to the local fee and is remitted to the state. Local food service fees are based on facility size (seating).

Minnesota: Minnesota maintains a fee schedule and environmental health regulatory service system very similar to Wisconsin. Chapter 157 of the Minnesota Statute entitled, "Food, Beverage, and Lodging Establishments", contains Minnesota's 2007 fee schedule. As in Wisconsin, local public environmental health regulatory agencies may, and often do, assess higher fees. Minnesota's fees in comparison to Wisconsin's proposed 2008 fees are as follows:

Minnesota's 2007 Environmental Health Service Fee Schedule		Wisconsin's Proposed Food Service Fee Schedule		
License Type	Fee	License Type	Proposed SFY 2010 Fee	Proposed SFY 2012 Fee
Annual Hospitality Fee (All food, beverage and lodging establishments)	\$35.00			
Annual Base Fee (All food, beverage and lodging establishment except Special Event Food Stands)	\$150.00			
Annual Base Fee (Special Event Food Stand)	\$40.00			
Food Service, Limited Menu/Pre-Packaged*	\$235.00	Restaurant, Pre-Packaged	\$90.00	\$105.00
Food Service, Small/Simple*	\$285.00	Restaurant, Simple	\$195.00	\$230.00
Food Service, Medium/Moderate*	\$345.00	Restaurant, Moderate	\$300.00	\$330.00
Food Service, Large/Complex*	\$545.00	Restaurant, Complex	\$430.00	\$540.00
Temporary/Mobile Food Carts/ Stands*	\$240.00	Temporary Restaurant	\$150.00	\$170.00
Certified Food Manager	\$28.00	Certified Food Manager	\$10.00	\$15.00
School, Second Annual Inspection	\$300.00			
Lodging*	\$185.00	Hotel, 5 – 30 Rooms	\$165.00	\$205.00
Lodging (per sleeping accommodation unit, not to exceed \$800)	\$8.00	Hotel, 31 – 99 Rooms	\$260.00	\$280.00
		Hotel, 100 – 199 Rooms	\$330.00	\$355.00

Operating without a License (mobile food unit, seasonal or special event food stand)	\$50.00	Hotel, 200 + Rooms	\$400.00	\$490.00
Operating without a License for ≤30 days (restaurant, food cart, lodging establishment)	\$100.00	Operating without a License	\$749.00	\$749.00
Operating without a License for >30 days (restaurant, food cart, lodging establishment)	\$300.00	Operating without a License	\$749.00	\$749.00

*Includes Annual Hospitality Fee and applicable Annual Base Fee

In almost every license type, the environmental health regulatory service fees assessed by the Minnesota Department of Health exceed those proposed by the Wisconsin Division of Public Health.

Summary of factual data and analytical methodologies

The department developed the proposed fees by researching demographic trends, economic growth, the number of regulated establishments, environmental health regulatory staffing levels, and operating costs. The proposed fees and related administrative codes were established in collaboration with representatives of the regulated industry and its small businesses. The department’s collaborative efforts were intended to ensure that any regulatory burdens and fiscal impacts were minimized. In many cases, the department and the collaborating regulated industry representatives replaced flat fees (fees not based on facility size, complexity or risk) with a series of graduated fees that were differentiated according to facility size, complexity and public health risk. From an evaluation of past and present conditions, the department developed projections for future workloads and operating costs. Operating expenses for State Fiscal Year 2010 were used as the benchmark for the revenue neutral fee increases. The department relied on all of the following sources to determine the impact the proposed fees and rules may have on small businesses:

- The 2002 Economic Census – Wisconsin Geographic Series, which is compiled by the U.S. census bureau every five years for each year ending in “2” and “7” and contains the latest available economic data compiled on businesses located in Wisconsin.
- Criteria adopted by the department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the department’s proposed rules would have a significant economic impact on a substantial number of small businesses. Pursuant to the department’s criteria, a proposed rule would have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year’s consumer price index or revenues are reduced by more than the prior year’s consumer price index. For the purposes of this rulemaking, 2007 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2007 is 2.8 percent.
- Records maintained in the department’s Digital Health Department Field Licensing and Inspection Program (FLIP) on the regulated entities, as of August 2007. This data was used to determine the number of entities licensed or certified by the department or its agents.
- An August 10, 2005, press release (Scott Larrivee, Public Information Officer) from the Wisconsin Department of Administration (DOA), entitled *Wisconsin Population*

Continues to Rise, that states “Estimates released by the Department of Administration’s Demographic Services Center today show a four percent increase in Wisconsin’s population since the 2000 U.S. Census.” Over a five–year period, the four percent increase represented an average population growth of 0.8% per year. Because the department had no historical data on the rate of increase of regulated establishments, the department determined that the number of regulated facilities will grow at a rate roughly equivalent to the growth of Wisconsin’s population. Therefore, for the purpose of projecting programmatic inspection loads and eventual fee revenue, regulated establishment growth was projected at 0.8% per year.

- Inflation rates from the Bureau of Labor Statistics for a 20 year period from 1987 through 2007, for use in projecting future department operating costs.
- Department data regarding historical staffing levels of department environmental health inspectors during the period 1999 through 2007. The following are the results.

Year	1999	2000	2001	2002	2003
#Inspectors	26	26	25.75	26	25
Year	2004	2005	2006	2007	
#Inspectors	24	23.5	22	22	

- Wage increase data from the Wisconsin Science Professionals (WSP). Additional wage increase data was obtained from the State of Wisconsin Office of State Employment Relations’ (OSER) *Compensation Plan 2005–2007*, to assess the influence of wage increases on program operating costs and to accurately project future operating costs. The WSP provided the FSRL Section with draft *Wage Adjustment Summaries, 1989 through 2003–05 Contracts*. The summary, dated January 2006, was prepared by Marie Stewart. From the WSP and from OSER data, the FSRL Section determined that, for the period 1987 through 2007, the wages of DPH Environmental Health regulatory service staff rose an average of 2.3% per year. In its November 2007 *WSP Bargaining Bulletin*, the WSP referenced an October 2007 presentation by the union to the Wisconsin legislature’s Joint Committee on Employment Relations (JCOER). The presentation highlighted the “Forgotten 8” job classifications – which includes Environmental Health Specialists and Public Health Sanitarians – whose wages have not kept pace with similar or identical classifications in neighboring states. The WSP discovered the following average hourly pay differentials for Environmental Health Specialists and Public Health Sanitarians between Wisconsin and neighboring Midwestern states. In each case, the hourly wages of Wisconsin Environmental Health Specialists and Public Health Sanitarians, as shown below, trailed behind those of the colleagues in neighboring Midwestern states.

Classification	Environmental Health Specialist – Advanced	Environmental Health Specialist	Public Health Sanitarian – Advanced	Public Health Sanitarian – Senior
Average Wis. Hourly Pay Differential to Neighboring Mid-western States:	-\$6.16	-\$3.35	-\$5.56	-\$5.18

- Standards published in the draft *Voluntary National Retail Food Regulatory Program Standards* (January 2005) published by the U.S. Food and Drug Administration (FDA) which includes recommendations on resource and staffing levels. The FDA in Standard No. 8 Program Support and Services, recommends staffing levels of one full-time staff devoted to food for every 280 – 320 inspections performed to determine an estimate or recommended levels of inspections.
- Department data on the number of inspections performed by department inspectors. The department determined that approximately 30% of licensed facilities will require re-inspection each year. Therefore, inspectors will perform 1.3 annual inspections per facility. Using the FDA recommended level of 280 – 320 inspections per inspector; each inspector should have a workload of 215 – 246 establishments. The department determined that its

workforce of 22 inspectors (as of August 2007) had a workload of 734 licenses establishments per department inspector. This workload is three times higher than that recommended by the FDA.

- Time study data of state and local agent health department inspectors, conducted by the department in Summer 2007. The study sought to determine the amount of time that was spent by a representative group of inspectors on the categories of food safety and recreational licensing licenses. In the survey, the department asked inspectors to identify the amount of time (as percent) they spent on restaurants, schools (food service inspections), lodging, campgrounds, public pools and water attractions, campgrounds, vending machines and body art (tattooing and piercing). The study determined that inspectors were allocating their time in the following manner:

Category	Restaurants	Schools (Food Service)	Lodging	Pools & Water Attractions	Camp-grounds	Vending Machines	Body Art
% of Time	52%	8%	18%	8%	6%	1%	7%

In meetings with trade associations representing sectors of the regulated community, the trade associations sought to have licensing and inspection fees based on the time required to perform the inspections. Therefore, these time study data were used as the basis of allocating FSRL operating costs to the various regulated community sectors

structures are based. Jurisdictions in general base their fees on facility risk, facility size, gross revenue, inspection time, programmatic costs, flat fees or various combinations of those factors.

- Fee data from the U.S. Food and Drug Administration, the Centers for Disease Control and Prevention, and state and local public health agencies in California, Kentucky, Massachusetts, Ohio, Oregon, and West Virginia. The data revealed no single trend or set of principals upon which most environmental health regulatory fee

- The Wisconsin Fee Structure Revision Workgroup, a workgroup assembled by the department to assist the department in developing the proposed fees and rules. The following individuals were members of the workgroup. The Committee met formally on September 11, 2007 and November 15, 2007. Informal meetings and conversations were held in between meetings:

Name	Office	Organization
Susan Quam	Executive Director	Wisconsin Restaurant Association
Peter Madland	Executive Director	Tavern League of Wisconsin
Tricia Pugal	President, Chief Executive Officer	Wisconsin Innkeepers Association
Kris Ullmer	Administrator	Wisconsin Bed & Breakfast Association
Lori Severson	Executive Director	Wisconsin Association of Campground Owners
Andrea Yenter	Camp Operations Manager	Wisconsin Lions Camp
Patrick Finnegan	Aquatics Director	Chula Vista Resort
Chet Gerlack	Executive Director	Association of Wisconsin Tourism Attractions
Cliff May	Owner	In Your Fact Tattooz
Jeff Parks	President & Chief Operating Officer	CL Swanson (Vending)
Dale Grosskurth	Environmental Health Director	Marathon County Health Department
Tim Banwell	Environmental Health Director	Rock County Health Department
Jeff Kindrai	Health Officer	Grant County Health Department
Susan Lorenz	Health Officer	Columbia County Division of Health
Carol Drury	Sanitarian	Wisconsin Division of Public Health
Scott Vesely	Program Manager – Campgrounds, Body Art	Wisconsin Division of Public Health
James Kaplanek	Section Chief	Wisconsin Division of Public Health
David Plumbers	Program Manager – Recreational Waters	Wisconsin Division of Public Health

- Department data on existing and potential local health department agents to ascertain the number of local health departments that would begin as agents of the department

and deliver environmental health service delivery in state fiscal years 2008 and 2009. Educated estimates were made regarding the number of additional local public

health jurisdictions that would provide environmental health regulatory services in subsequent years. The current and projected number of state and local agent health department licensed facilities were as follows:

State Fiscal Year	Total Number of Facilities*	Number of DPH Inspected Facilities	Number of Agent LPHD Inspected Facilities
2006			
2007**	32,256	16,154	16,102
2008	32,514	14,525	17,989
2009	32,774	13,471	19,303
2010	33,036	13,207	19,829
2011	33,301	12,939	20,362
2012	33,567	12,665	20,902
2013	33,836	12,386	21,450
2014	34,106	12,102	22,005
2015	34,379	11,812	22,567
2016	34,654	11,517	23,137

Assumptions:

* Projected 0.8% growth per year.

** Count of facilities in FLIP on 7/23/07.

In SFY 2008, Sauk, Juneau, Adams, Franklin Counties will become Agent LPHDs.

In SFY 2009, Vernon, Richland, Grant, Iowa, Lafayette and Crawford Counties will become Agent LPHDs.

After SFY 2009, 2.5 new Agent LPHDs per year with an average of 362.55 facilities per LPHD.

Analysis and supporting documents used to determine effect on small business

The department's Food Safety and Recreational Licensing (FSRL) program provides licensing and inspection regulatory services for restaurants, lodging, public pool and water attraction, body art and vending establishments. The state's service delivery is supported entirely by program revenue through licensing, inspection and other regulatory service fees. The proposed changes to the fee schedules contained in HFS 173 –Tattooing and Body Piercing; HFS 175 – Recreational and Educational Camps; HFS 178 – Campgrounds; HFS 195 – Hotels, Motels and Tourist Rooming Houses; HFS 196 – Restaurants; HFS 197 – Bed and Breakfast Establishments; and HFS 198 – Vending of Food will increase and create fees for environmental health regulatory service delivery for state-licensed establishments. In order to better sustain the program and ease the impact of increased fees, the FSRL program has proposed a two-phase fee increase. An initial fee increase will go into effect in state fiscal year 2010 and a second, and generally smaller, fee increase will go into effect in SFY 2012. This two-phased fee increase approach should ensure that the FSRL program can operate without a deficit until 2014.

The proposed fee increases should raise FSRL program revenue to a level where, for an approximately two-year period, the program's revenue will support program operating expenses. Despite losing permanent full-time employee positions and keeping operating costs increases at a level lower than that of inflation, current program fee revenue is not adequate to support the FSRL program. The proposed fee increases will allow the FSRL program to once again cover its operating costs.

The impact of the proposed fee increases on small businesses will be varied. The proposed fees schedules

generally reflect a typical increase of \$20 to \$100 for an annual operating license. Most FSRL fees have not kept pace with the rate of inflation for the past several years and, in general, the current and proposed annual license fee burdens are small. The proposed fees will increase operating costs for small businesses. However, the annual impact of most fees is small – particularly when evaluated in respect to the rate of inflation. The proposed fee increases will be at a level well below the revenue and expense increases brought about by the change in the 2007 consumer price index of 2.8%.

Based on input from regulated industry representatives, the financial burden will be less on those businesses that comply with state codes and act to protect public health and safety. A greater fiscal burden will be borne by those establishments that require repeated re-inspections and operate without licenses. Small business revenues should not be impacted by these fee increases.

The direct impact of the proposed fee changes on businesses is limited to the respective license or permit fees and fees for pre-inspections. Licenses and the associated fees are required under state law. Licensing and permit fees generally help the department to off-set the required annual inspections and consulting activities of the regulated entities by the department.

The pre-inspection fee reflects the department's cost of the activities performed by department staff to help an entity achieve compliance with applicable statutes and rules for department licensure. A pre-inspection by the department may include, but is not limited, to a review of an entity's site and operational plans, multiple on-site inspections, and unlimited consultation periods. The legislature, under the authorizing statutes, requires the department to conduct at least one pre-inspection of an establishment before the department issues a license to the establishment and requires the department to establish, by rule, fee costs of the pre-inspection. The pre-inspection and resulting pre-inspection fee is a one-time only fee charged to applicants for a new initial license to operate an establishment. The pre-inspection requirement and resulting fee does not affect licensed operators, unless changing to a new establishment.

The proposed re-inspection fee, fee for late renewal, fee for operating without a license (or in the case of restaurant, a fee for operating without a certified food manager) will only affect entities found by the department to be out of compliance with state law or the department's administrative rules. For example, an entity may be assessed a re-inspection fee if upon a routine inspection or complaint investigation, the entity is found to have a violation that can affect public health and safety causing a follow-up inspection to determine whether the violation has been corrected as ordered. The newly created re-inspection fee paid by deficient operators helps to minimize the programmatic fee increases on code-compliant operators.

The proposed special condition inspection fee will only affect non-licensed entities. As part of the department's general responsibility for oversight of public health, FSRL staff currently conducts inspections, without reimbursement, for state, local and private sector entities for activities that are not directly related to the department's regulatory responsibilities. Examples of special condition inspections include sanitation inspections of liquor establishments for liquor licenses, establishment pre-purchase compliance inspections for persons intending to purchase DHFS-regulated facilities, and food safety inspections at

schools participating in the National School Lunch (NSLP) or School Breakfast Programs (SBP).

At current fee revenue levels, the department projects a program deficit of \$699,540 in state fiscal year (SFY) 2009 that will increase to \$1,799,056 in SFY 2010, and projected to continue to increase each state fiscal year unless the fee changes proposed in this order are implemented. If this occurs, the department would be forced to reduce staff, which would lead to less frequent inspections, and impede public health and safety.

To maintain revenue sufficient to conduct the department’s public health regulatory activities for SFY 2010 through SFY 2012, the department proposes to increase current fees and create new fees. To ease the impact of increased fees, the FSRL program proposes a two–phase fee increase. A fee change will go into effect in state fiscal year 2010 and a second, and generally smaller fee increase will go into effect in SFY 2012. Fee information specific to the regulated entities follows.

HFS 173 – Tattoo and Body Piercing

Proposed fees for tattoo and body piercing establishments for SFY 2010 (applicable for licenses issued from April 1, 2009 through March 31, 2011) and for SFY 2012 (applicable for licenses issued on or after April 1, 2011)

Business Category	Current Fee	Proposed SFY 2010 Fee	Difference from Current to 2010 Proposed	Proposed SFY 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee
			Amount		Amount
Tattoo or Body Piercing License Fee	\$ 100	\$ 125	\$ 25	\$ 135	\$ 10
Tattoo or Body Piercing Pre–Inspection Fee	\$ 75	\$ 240	\$ 165	\$ 255	\$ 15
Tattoo or Body Piercing Re–inspection Fee	\$0	\$ 150	\$150	\$ 180	\$ 30
Tattoo and Body Piercing (Combined) License Fee	\$ 150	\$ 205	\$ 55	\$ 220	\$ 15
Tattoo and Body Piercing (Combined) Pre–Inspection	\$ 75	\$ 375	\$ 300	\$ 400	\$ 25
Tattoo and Body Piercing (Combined) Re–Inspection	\$0	\$ 240	\$240	\$ 295	\$ 55
Tattoo and/or Body Piercing Practitioner’s License	\$ 50	\$ 50	\$ 0	\$ 60	\$ 10
Tattoo and/or Body Piercing Temporary Event License Fee (per event)	\$ 100	\$ 100	\$ 0	\$ 100	\$ 0

Late Fee	Fee for Operating Without a License	Duplicate Fee	Fee for special condition inspections
\$85	\$749 (\$150 for practitioners)	\$15	\$175

The department proposes to increase license fees, pre–inspection fees, and practitioner fees and to create a re–inspection fee, a fee for late renewal, a fee for operating without a license, a fee for a duplicate license, and a fee for special condition inspections. The proposed rules include fee schedules, provisions clarifying the department’s authority or a licensee’s requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.

The department regulates tattooists, tattoo establishment, body piercers, and body piercing establishments, and combined tattoo and body piercing establishments under ch. HFS 173. The department does not regulate establishments that engage only in ear piercing.

Data obtained from the department’s FLIP database indicate that the department licenses approximately 38 establishments that perform tattooing or body piercing and 45 establishments that perform both tattooing and body piercing, for a total of 83 licensed establishments. The department’s data also shows that approximately 837 individuals are licensed to practice in these establishments. These industries are included under the North American Classification System (NAICS) industry code 812199. According to the NAICS

data, the total gross annual receipts for the 226 establishments included under industry code 812199 is \$36,514,000 making average gross annual receipts for 226 establishments to be \$161,566. NAICS reports that the total number of paid employees in these 226 establishments is 1,273 for an average of 5.6 employees per establishment.

Based on a review of the department’s data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely that all of the businesses regulated under ch. HFS 173, are small businesses as that term is defined under s. 227.114, Stats.

The proposed license fee for these businesses for the 2010 and 2012 state fiscal years, represent for either a tattoo or body piercing establishment the equivalent of an annual increase of approximately \$3 since the fee was established in 1998. For a combined tattooing and body piercing establishment the proposed fee is equivalent to an annual increase of approximately \$6 since the fee was established in 1998.

The proposed pre–inspection fee for these businesses is a one–time only fee for operators seeking initial licensure or to operate a new establishment. The amount of the increase represents the complexity of the services needed and provided

and the value of the services to public health and safety, and to the person seeking licensure.

The re-inspection fee, fee for late renewal, and fee for operating without a license would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate license is assessed only if the

licensee requests a duplicate license. The special condition inspection fee would only be charged to un-licensed persons seeking inspection and consultation services from the department.

The proposed fee changes do not have a significant economic impact on tattoo and body piercing establishments.

HFS 175 – Recreational and Educational Camps

Proposed fees for recreational and educational camps for SFY 2010 (applicable for licenses issued from April 1, 2009 through March 31, 2011) and for SFY 2012 (applicable for licenses issued on or after April 1, 2011)

License type	Current fee	Proposed SFY 2010 Fee	Difference from Current to SFY 2010 Proposed Fee	Proposed SFY 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee
			Amount		Amount
Recreational-Educational Camps	\$200	\$440	\$240	\$505	\$65
Rec-Ed Camps Preinspection	\$0	\$1,050	\$1,050	\$1,200	\$150
Rec-Ed Camps Reinspection	\$0	\$630	\$630	\$720	\$90

Late Fee	Fee for Operating Without a License	Duplicate Fee	Fee for special condition inspections
\$85	\$749	\$15	\$175

The department proposes to increase permit, pre-inspection, and late renewal fees and to create a re-inspection fee, a fee for operating without a permit, and a fee for special condition inspections. The proposed rules include fee schedules, provisions clarifying the department’s authority or a permittee’s requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.

The department regulates recreational and educational camps under ch. HFS 175. Often, these camps are run by religious, educational, community service and/or other not-for-profit organizations. Recreational and educational camps do not include overnight planned programs at licensed hotels or motels or sports team tournaments or training camps. Although there is no formal data, there appears to be little diversity in the size of Wisconsin’s recreational and educational camp establishments. Anecdotally, most camps are located in rural or wooded settings and provide seasonal camping experiences to groups of children and young adults.

Data obtained from the department’s FLIP database indicates that the department licenses approximately 256 establishments that provide recreational and educational services. Roughly 35 of these camps are inspected by department inspectors. The other 221 camps are inspected and licensed by local agent public health departments.

This industry is included under the North American Classification System (NAICS) industry code 721214. According to the NAICS data, the total gross annual receipts for the 124 establishments included under industry code

721214 is \$70,154,000 making average gross annual receipts for 124 establishments reported by NAICS to be \$565,758. NAICS reports that the total number of paid employees in these 124 establishments is 843 for an average of 6.8 employees per establishment.

Based on a review of the department’s data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely that all of the businesses regulated under ch. HFS 175, are small businesses as that term is defined under s. 227.114, Stats.

The proposed license fee for these businesses for the 2010 and 2012 state fiscal years represent the equivalent of an annual increase of approximately \$28 per year since the fees were last revised in 2002.

The proposed pre-inspection fee for these businesses is a one-time only fee for operators seeking initial licensure or to operate a new camp. The amount of the increase represents the complexity of the services needed and provided to open a new camp and the value of the services to public health and safety and the person seeking licensure.

The re-inspection fee, fee for late renewal, and fee for operating without a license would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate license is assessed only if the licensee requests a duplicate license. The special condition inspection fee would only be charged to un-licensed persons seeking inspection and consultation services from the department.

The proposed fee changes do not have a significant economic impact on recreational and educational camps.

HFS 178 – Campgrounds

Proposed fees for campgrounds for SFY 2010 (applicable for licenses issued from April 1, 2009 through March 31, 2011) and for SFY 2012 (applicable for licenses issued on or after April 1, 2011)

License type	Current Fee	Proposed SFY 2010 Fee	Difference from Current to SFY 2010 Proposed Fee	Proposed SFY 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee
			Amount		Amount
Campground Fee: 1-25 Sites	\$106	\$150	\$44	\$175	\$25
Campground Preinspection: 1-25 Sites	\$0	\$335	\$335	\$380	\$45

Campground Reinspection: 1–25 Sites	\$0	\$210	\$210	\$240	\$30
Campground Fee: 26–50 Sites	\$147	\$215	\$68	\$250	\$35
Campground Preinspection: 26–50 Sites	\$0	\$495	\$495	\$565	\$70
Campground Reinspection: 26–50 Sites	\$0	\$300	\$300	\$350	\$50
Campground Fee: 51–100 Sites	\$175	\$265	\$90	\$305	\$40
Campground Preinspection: 51–100 Sites	\$0	\$610	\$610	\$700	\$90
Campground Reinspection: 51–100 Sites	\$0	\$370	\$370	\$425	\$55
Campground Fee: 101–199 Sites	\$195	\$310	\$115	\$355	\$45
Campground Preinspection: 101–199 Sites	\$0	\$725	\$725	\$830	\$105
Campground Reinspection: 101–199 Sites	\$0	\$440	\$440	\$500	\$60
Campground Fee: 200 + Sites	\$225	\$355	\$130	\$410	\$55
Campground Preinspection: 200+ Sites	\$0	\$840	\$840	\$965	\$125
Campground Reinspection: 200+ Sites	\$0	\$505	\$505	\$580	\$75
Special Event Campground: 1–25 Sites	\$106	\$150	\$44	\$175	\$25
Special Event Campground: 26–50 Sites	\$147	\$215	\$68	\$250	\$35
Special Event Campground: 51–100 Sites	\$175	\$265	\$90	\$305	\$40
Special Event Campground: 101–199 Sites	\$195	\$310	\$115	\$355	\$45
Special Event Campground: 200+ Sites	\$225	\$355	\$130	\$410	\$55

Late Fee	Fee for Operating Without a License	Duplicate Fee	Fee for special condition inspections
\$85	\$749 (\$150 for practitioners)	\$15	\$175

The department regulates campgrounds under ch. HFS 178. The range of businesses regulated by HFS 178 – Campgrounds includes those establishments where a parcel or tract of land is designed, maintained, or intended for non-permanent overnight use by temporary dwellings that are no larger than 400 square feet.

The department proposes to increase permit and late renewal fees and to create pre-inspection and re-inspection fees, a fee for operating without a permit, and a fee for special condition inspections.

Data obtained from the department’s FLIP database indicates approximately 429 campgrounds with 1–25 camp sites, 259 campgrounds with 26–56 campsites, 202 campgrounds with 51–100 campsites, 130 campgrounds with 101–199 campsites, and 69 campgrounds with 200 or more campsites. Some campgrounds are owned, operated or franchised by large companies with national scope while other campgrounds are local businesses owned and operated by individuals. Roughly 63% of licensed campgrounds have 50 or fewer camp sites. Slightly more than 37% of the campgrounds have more than 50 camp sites.

This industry is included under the North American Classification System (NAICS) industry code 721211. According to the NAICS data, the total gross annual receipts

for the 148 establishments included under industry code 721211 is \$50,293,000 making average gross annual receipts for the 148 establishments reported by NAICS to be \$339,818. NAICS reports that the total number of paid employees in these 148 establishments is 344 for an average of 2.32 employees per establishment.

The difference in the department and NAICS data may be the result of the U.S. Census not identifying some campgrounds, the non-reporting of some campgrounds, or ownership of multiple campgrounds by a single owner.

Based on a review of the department’s data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely most of the businesses regulated under ch. HFS 178, are small businesses as that term is defined under s. 227.114, Stats.

Based on the number of campsites per campground, the proposed license fee for these businesses for the 2010 and 2012 state fiscal years are as follows:

- Campgrounds with 1–25 campsites, the equivalent of an annual increase of approximately \$6 per year since the fees were last revised in 2002;
- Campgrounds with 26–50 campsites, the equivalent of an annual increase of approximately \$9 per year since the fees were last revised in 2002;

- Campgrounds with 51–100 campgrounds, the equivalent of an annual increase of approximately \$12 per year since the fees were last revised in 2002;
- Campgrounds with 101–199 camp sites, the equivalent of an annual increase of approximately \$15 per year since the fees were last revised in 2002;
- Campgrounds with 200 or more camp sites the equivalent of an annual increase of approximately \$17 per year since the fees were last revised in 2002.

The proposed pre-inspection fee for these businesses is a one-time only fee for operators seeking initial licensure or to operate a new campground. The amount of the increase represents the complexity of the services needed and provided

to open a new camp and the value of the services to public health and safety and the person seeking licensure.

The re-inspection fee, fee for late renewal, and fee for operating without a license would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate license is assessed only if the licensee requests a duplicate license. The special condition inspection fee would only be charged to un-licensed persons seeking inspection and consultation services from the department.

The proposed fee changes do not have a significant economic impact on campgrounds.

HFS 195 – Hotels, Motels and Tourist Rooming Houses

Proposed fees for hotels, motels and tourist rooming houses for SFY 2010 (applicable for licenses issued from April 1, 2009 through March 31, 2011) and for SFY 2012 (applicable for licenses issued on or after April 1, 2011)

License type	Current Fee	Proposed SFY 2010 Fee	Difference from Current to SFY 2010 Proposed Fee	Proposed 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee
			Amount		Amount
Tourist Rooming House	\$85	\$120	\$35	\$135	\$15
TRH Preinspection	\$125	\$280	\$155	\$300	\$20
TRH Reinspection		\$170		\$185	\$15
Hotel Base Fee 5–30	\$124	\$165	\$41	\$205	\$40
Hotel 5–30 Preinspection	\$125	\$380	\$255	\$480	\$100
Hotel 5–30 Reinspection	\$0	\$230	\$230	\$290	\$60
Hotel Base Fee 31–99	\$190	\$260	\$70	\$280	\$20
Hotel 31–99 Preinspection	\$200	\$615	\$415	\$665	\$50
Hotel 31–99 Reinspection	\$0	\$365	\$365	\$400	\$35
Hotel Base Fee 100–199	\$250	\$330	\$80	\$355	\$25
Hotel 100–199 Preinspection	\$275	\$795	\$520	\$795	\$0
Hotel 100–199 Reinspection	\$0	\$470	\$470	\$505	\$35
Hotel Base Fee 200+	\$300	\$400	\$100	\$490	\$90
Hotel 200+ Preinspection	\$350	\$950	\$600	\$1,185	\$235
Hotel 200+ Reinspection	\$0	\$575	\$575	\$700	\$125

Late Fee	Fee for Operating Without a License	Duplicate Fee	Fee for special condition inspections
\$85	\$749	\$15	\$175

The department proposes to increase permit, pre-inspection, and late renewal fees and to create a re-inspection fee, a fee for operating without a permit, and a fee for special condition inspections. The proposed rules include fee schedules, provisions clarifying the department’s authority or a permittee’s requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.

The department regulates hotels, motels, and tourist rooming houses under ch. HFS 195. Many tourist rooming houses are owned by individuals or families who rent their seasonal cottages or homes to tourists when the cottage or home is not used by the owner. In addition, many small hotels and motels operate in Wisconsin’s northern tourist areas on a seasonal basis. Based on department data and an anecdotal understanding of the regulated community, there appears to be significant diversity in the size of Wisconsin’s hotel, motel and tourist room house businesses. The businesses range from large luxury hotels owned by national or international corporations to single tourist rooming houses owned by families or individuals.

Data obtained from the department’s FLIP database indicates that the department licenses approximately 5,011

establishments. Department inspectors inspect 50% of these establishments. The other 50% are inspected and licensed by local agent public health departments. Almost 45% of the businesses regulated under HFS 195 are tourist rooming houses. Roughly 40% of the businesses are hotels or motels with between 5 and 99 guest rooms. Slightly more than 5% of the businesses are hotels or motels with over 100 guest rooms.

Except for tourist rooming houses, this industry is included under the North American Classification System (NAICS) industry code 721110. Tourist homes are included under NAICS industry code 721199. According to the NAICS data, the total gross annual receipts for the 1,261 establishments included under industry code 721110 (and 721199) is \$1,154,024,000, making average gross annual receipts for 1,261 establishments reported by NAICS to be \$915,166. NAICS reports that the total number of paid employees in these 1,261 establishments is 25,255 for an average of 20.19 employees per establishment.

The difference in number of establishments between the department’s data and the 2002 U.S. Census data is probably due to numerous tourist rooming houses not being counted. Many tourist rooming houses are owned by individuals or

families who rent their seasonal cottages or homes to tourists when the owner does not use the cottage or home. In addition, many small hotels and motels operate in Wisconsin’s northern tourist areas on a seasonal basis. They may have been missed in the national census process.

Based on a review of the department’s data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely that the majority of the businesses regulated under ch. HFS 195, are small businesses as that term is defined under s. 227.114, Stats.

Based on the number of rooms per establishment, the proposed license fee for these businesses for the 2010 and 2012 state fiscal years are as follows:

- Lodging establishments that are tourist rooming houses, the equivalent of an annual increase of approximately \$5 per year since the fees were last revised in 2002;
- Lodging establishments with 5–30 rooms the equivalent of an annual increase of approximately \$7 per year since the fees were last revised in 2002;
- Lodging establishments with 31–99 rooms the equivalent of an annual increase of approximately \$8 per year since

the fees were last revised in 2002;

- Lodging establishments with 100–199 rooms the equivalent of an annual increase of approximately \$10 per year since the fees were last revised in 2002;
- Lodging establishments with 200 or more rooms the equivalent of an annual increase of approximately \$17 per year since the fees were last revised in 2002.

The proposed pre–inspection fee for these businesses is a one–time only fee for operators seeking initial licensure or to operate a new establishment. The amount of the increase represents the complexity of the services needed and provided to open a new establishment and the value of the services to public health and safety and the person seeking licensure.

The re–inspection fee, fee for late renewal, and fee for operating without a license would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate license is assessed only if the licensee requests a duplicate license. The special condition inspection fee would only be charged to un–licensed persons seeking inspection and consultation services from the department.

The proposed fee changes do have a significant economic impact on lodging establishments.

HFS 196 – Restaurants

Proposed fees for restaurants for SFY 2010 (applicable for licenses issued from April 1, 2009 through March 31, 2011) and for SFY 2012 (applicable for licenses issued on or after April 1, 2011)

License type	Current Fee	Proposed SFY 2010 Fee	Difference from Current to SFY 2010 Proposed Fee	Proposed SFY 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee
			Amount		Amount
Pre–Packaged Restaurant	\$75	\$90	\$15	\$105	\$15
Pre–Packaged Reinspection	\$0	\$115	\$115	\$130	\$15
Pre–Packaged Preinspection	\$125	\$175	\$50	\$195	\$20
Simple Restaurant	\$148	\$195	\$47	\$230	\$35
Simple Reinspection	\$0	\$265	\$265	\$320	\$55
Simple Pre–Inspection	\$150	\$430	\$280	\$520	\$90
Moderate Restaurant	\$210	\$300	\$90	\$330	\$30
Moderate Reinspection	\$0	\$425	\$425	\$470	\$45
Moderate Pre–Inspection	\$250	\$705	\$455	\$770	\$65
Complex Restaurant	\$290	\$430	\$140	\$540	\$110
Complex Reinspection	\$0	\$610	\$610	\$770	\$160
Complex Pre–Inspection	\$350	\$1,020	\$670	\$1,285	\$265
Temporary Restaurant Fee	\$100	\$150	\$50	\$170	\$20
DPI (School) Satellite	\$115	\$135	\$20	\$150	\$15
DPI (School) Production	\$315	\$380	\$65	\$440	\$60

Late Fee	Fee for Operating Without a License	Fee for Operating Without a Certified Food Manager	Duplicate Fee	Fee for special condition inspections
\$85	\$749	\$150	\$15	\$175

The department proposes to increase permit, pre–inspection, and late renewal fees; and to create a re–inspection fee, a fee for operating without a permit, a fee for operating without a certified operator, and a fee for special condition inspections. In addition to proposed changes relating to fees, the department also proposes to modify ch. HFS 196 to revise the complexity rating formula under s. HFS 196.04 for restaurants that handle frozen pre–formed meat patties, chicken breasts, and breaded, chopped or comminuted meats. Specifically, the department intends to re–categorize entities that handle frozen pre–formed meat patties, chicken

breasts, and breaded, chopped or comminuted meats to the same level that applies to raw meat handling. Entities that handle frozen and preformed meat patties, chicken breasts, or breaded, chopped or comminuted meats are currently categorized as less complex. Retail food service establishments are rated for complexity based on an evaluative formula. Entities that handle raw meat, poultry and seafood pose a greater risk for introducing food–borne contamination and, as such, have a higher level of complexity and an expectation for more frequent and detailed inspections. However, the department has determined through program

evaluation that there is no discernable difference in risk between handling frozen pre-formed meats and raw poultry, meat or seafood. The revision of the risk-based complexity rating formula may, in some instances, result in higher fees. The proposed rules include fee schedules, provisions clarifying the department's authority or a permittee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.

The department regulates restaurants under ch. HFS 196. The restaurants regulated by the department include food carts, national chains, fast food, pre-packaged food concessions, full service and fine dining restaurants. The department licenses restaurants according to size and complexity of food service.

Data obtained from the department's FLIP database indicates licenses issued to approximately 21,837 restaurants. Approximately one quarter of the licensed restaurants are inspected by the department. The food industry are included under the North American Classification System (NAICS) subsector 722. According to the NAICS data, the total gross annual receipts for the 8,730 establishments included under subsector 722 is \$4,917,401,000, making average gross annual receipts for these establishments to be \$563,276. NAICS reports that the total number of paid employees in these 8,730 establishments is 158,886 for an average of 18.20 employees per establishment.

Based on a review of the department's data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely that at least 10% of the businesses regulated under ch. HFS 196, are small businesses as that term is defined under s. 227.114, Stats.

Based on size and complexity, the proposed license fee for these businesses for the 2010 and 2012 state fiscal years are as follows:

- Pre-package restaurants, the equivalent of an annual

increase of approximately \$3 per year since the fees were last revised in 2002;

- Simple restaurants the equivalent of an annual increase of approximately \$7 per year since the fees were last revised in 2002;
- Moderate restaurants the equivalent of an annual increase of approximately \$11 per year since the fees were last revised in 2002;
- Complex restaurants the equivalent of an annual increase of approximately \$23 per year since the fees were last revised in 2002;
- Temporary restaurants the equivalent of an annual increase of approximately \$6 per year since the fees were last revised in 2002;
- DPI (School) Satellite the equivalent of an annual increase of approximately \$3 per year since the fees were last revised in 2002; DPI (School) Production the equivalent of an annual increase of approximately \$11 per year.

The proposed pre-inspection fee for these businesses is a one-time only fee for operators seeking initial licensure or moving to open a new establishment. The amount of the increase represents the complexity of the services needed and provided and the value of the services to public health and safety and to the person seeking licensure.

The re-inspection fee, fee for late renewal, and fee for operating without a license, or fees for operating without a certified food operator would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate license is assessed only if the licensee requests a duplicate license. The special condition inspection fee would only be charged to un-licensed persons seeking inspection and consultation services from the department.

The proposed fee and rules changes do not have a significant economic impact on restaurants.

HFS 197 – Bed and Breakfast Establishments

Proposed fees for bed and breakfast establishments for SFY 2010 (applicable for licenses issued from April 1, 2009 through March 31, 2011) and for SFY 2012 (applicable for licenses issued on or after April 1, 2011)

License type	Current Fee	Proposed SFY 2010 Fee	Difference from Current to SFY 2010 Proposed Fee	Proposed SFY 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee
			Amount		Amount
Bed and Breakfast	\$65	\$100	\$35	\$110	\$10
B&B Preinspection	\$125	\$225	\$100	\$240	\$15
B&B Reinspection	\$0	\$140	\$140	\$150	\$10

Late Fee	Fee for Operating Without a License	Duplicate Fee	Fee for special condition inspections
\$85	\$749	\$15	\$175

The department proposes to increase permit, pre-inspection, and late renewal fees; and to create a re-inspection fee, a fee for operating without a permit, and a fee for special condition inspections. In addition to modifying and creating fees, the department may update the rules as needed to ensure continued consistency between rules and current practice. The proposed rules include fee schedules, provisions clarifying the department's authority or a permittee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.

The department regulates bed and breakfast establishments under ch. HFS 197. Bed and Breakfast establishments are personal residences that also serve as lodging facilities with 8 or fewer guest rooms and the only meal served to guests is breakfast. Bed and breakfast establishments may have no more than 20 guests per night and those guests may not stay longer than 10 nights per stay.

Data obtained from the department's FLIP database indicates that the department licenses approximately 408 establishments. This industry is included under the North

American Classification System (NAICS) industry code 721191. According to the NAICS data, the total gross annual receipts for the 81 establishments included under industry code 721191 is \$16,171,000, making average gross annual receipts for 81 establishments to be \$199,642. NAICS reports that the total number of paid employees in these 81 establishments is 391 for an average of 4.83 employees per establishment.

Based on a review of the department’s data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely that all of the businesses regulated under ch. HFS 197 are small businesses as that term is defined under s. 227.114, Stats.

The proposed license fee for these businesses for the 2010 and 2012 state fiscal years represent the equivalent of an annual increase of approximately \$4 per year since the fees were last revised in 2002.

The proposed pre-inspection fee for these businesses is a one-time only fee for operators seeking initial licensure or moving to open a new establishment. The amount of the increase represents the complexity of the services needed and provided and the value of the services to public health and safety and to the person seeking licensure.

The re-inspection fee, fee for late renewal, and fee for operating without a license would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate license is assessed only if the licensee requests a duplicate license. The special condition inspection fee would only be charged to un-licensed persons seeking inspection and consultation services from the department.

The proposed fee changes do not have a significant economic impact on bed and breakfast establishments.

HFS 198 – Vending of Food

Proposed fees for vending of food for SFY 2010 (applicable for licenses issued from April 1, 2009 through March 31, 2011) and for SFY 2012 (applicable for licenses issued on or after April 1, 2011)

License type	Current Fee	Proposed SFY 2010 Fee	Difference from Current to SFY 2010 Proposed Fee	Proposed SFY 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee
			Amount		Amount
Vending Machine Commissary	\$175	\$230	\$55	\$280	\$50
Vending Comm Preinspection	\$150	\$455	\$305	\$675	\$220
Vending Comm Reinspection	\$0	\$335	\$335	\$400	\$65
Vending Machine Storage	\$85	\$150	\$65	\$215	\$65
Vending Mach. Preinspection	\$0	\$285	\$285	\$515	\$230
Vending Mach. Reinspection	\$0	\$210	\$210	\$310	\$100
Vending Machine Operator	\$100	\$125	\$25	\$125	\$0
Vending Machine Sticker	\$6	\$8	\$2	\$9	\$1

Late Fee	Fee for Operating Without a Permit	Duplicate Fee	Fee for special condition inspections
\$85	\$749	\$15	\$175

The department proposes to increase permit, pre-inspection, and late renewal fees; and to create a re-inspection fee, a fee for operating without a permit, and a fee for special condition inspections. In addition to modifying and creating fees, the department may update the rules as needed to ensure continued consistency between rules and current practice. The proposed rules include fee schedules, provisions clarifying the department’s authority or a permittee’s requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.

The department regulates vending machine operators, vending machines, vending machine commissaries, and vending machine commissary storage under ch. HFS 198.

Data obtained from the department’s FLIP database indicate the following licensed facilities: 26 food vending machine commissaries, 83 food vending machine storage facilities, and 170 food vending machine operators. This industry is included under the North American Classification System (NAICS) industry code 454210. According to the NAICS data, the total gross annual receipts for the 130 establishments included under industry code 454210 is \$224,896,000, making average gross annual receipts for 130 establishments to be \$1,729,969. NAICS reports that the total number of paid employees in these 130 establishments is 1,880 for an average of 14.5 employees per establishment.

Based on a review of the department’s data and a review of the NAICS data from the 2002 U.S. Economic Census for

Wisconsin, the department has determined that it is likely that all of the businesses regulated under ch. HFS 198, are small businesses as that term is defined under s. 227.114, Stats.

Based on the type of license, the proposed permit fee for these businesses for the 2010 and 2012 state fiscal years are as follows:

- Vending machine commissaries, the equivalent of an annual increase of approximately \$10 per year since the fees were last revised in 2002;
- Vending machine commissary storage, the equivalent of an annual increase of approximately \$12 per year since the fees were last revised in 2002;
- Vending machine operators, the equivalent of an annual increase of approximately \$3 per year since the fees were last revised in 2002;
- Vending machine stickers, the equivalent of an annual increase of approximately \$.30 per year since the fees were last revised in 2002.

The proposed pre-inspection fee for these businesses is a one-time only fee for operators seeking initial licensure or to operate a new establishment. The amount of the increase represents the complexity of the services needed and provided and the value of the services to public health and safety and to the person seeking licensure.

The re-inspection fee, fee for late renewal, and fee for operating without a license would not affect entities that are in compliance with state law and applicable administrative

rules. The fee for a duplicate license is assessed only if the licensee requests a duplicate license. The special condition inspection fee would only be charged to un-licensed persons seeking inspection and consultation services from the department.

The proposed fee changes do not have a significant economic impact on persons vending food.

Initial Regulatory Flexibility Analysis

The proposed fees and proposed rule changes to chs. HFS 173, 175, 178, 195, 196, 197, and 198, will affect a substantial number of small businesses, however, the proposed fees and proposed rule changes will not have a significant economic impact on those businesses.

The direct impact of the proposed fee changes on businesses is limited to the fees associated with obtaining initial and renewal permits or licenses and pre-inspections to operate an establishment. Licenses and pre-inspections, and the associated fees are required by the legislature. Re-inspection fees, fees for late renewal, fees for operating without license, for the majority of the entities affected by the proposed changes are also required by the legislature. The department cannot exempt businesses from the fee requirements.

Re-inspection fees, fees for late renewal, fees for operating without license only affect an entity if the entity is out of compliance with the state law or regulations. Proposed fees for special condition inspections only affect un-licensed persons who request inspection or consultation services from the department.

Proposed rules should not add additional cost to businesses, as they are intended to update and clarify current rules and statutes. The proposed rules do not contain schedules or deadlines for compliance, reporting requirements, operational or performance standards.

Fiscal Estimate

Summary

The Wisconsin Division of Public Health's Food Safety and Recreational Licensing (FSRL) program provides licensing and inspection regulatory services for restaurants, lodging, public pool and water attraction, body art and vending establishments. The state's service delivery is supported entirely by program revenue through licensing, inspection and other regulatory service fees. The proposed changes to the fee schedules contained in HFS 173 – Tattooing and Body Piercing; HFS 175 – Recreational and Educational Camps; HFS 178 – Campgrounds; HFS 195 – Hotels, Motels and Tourist Rooming Houses; HFS 196 – Restaurants; HFS 197 – Bed and Breakfast Establishments; and HFS 198 – Vending of Food will increase the fees for environmental health regulatory service delivery for state-licensed establishments. In order to better sustain the program and ease the impact of increases fees, the FSRL program has proposed a two-phase fee increase. An initial fee increase will go into effect in state fiscal year 2010 and a second, and generally smaller, fee increase will go into effect in SFY 2012. This two-phased fee increase approach should ensure that the FSRL program can operate without a deficit until 2014.

The proposed fee increases will not affect Food Safety and Recreational Licensing program's operating costs. Approximately 71% of the program's costs are associated with staff salaries and fringe benefits. Staffing levels are projected to remain flat for the foreseeable future. For the past several years, staff salaries and benefits have increased at a rate lower than the average annual rate of inflation. The fee

increases should raise program revenue from approximately \$2,862,088 in State Fiscal Year (SFY) 2009 to \$3,565,811 in SFY 2010 and to \$3,733,332 in SFY 2012.

The impact of this proposed fee schedule increase on local governments is varied and indeterminate. Slightly more than half of the state's local public health departments (LPHDs) provide environmental health regulatory services as agents of the state. Each agent LPHD reimburses 10% of its regulated establishment license revenue to the state for centralized administration and technical support. For those agent health departments, the increased fees will result in a higher reimbursement amount – equaling higher operating costs.

Some agent health departments base their local environmental health regulatory fee structure on the state's fee schedule while other agent health departments maintain fees that are much higher than the state's. Therefore, some local jurisdictions will raise fees commensurate with the new state fees. Other jurisdictions – whose fees are higher than the state's – may wish to wait before adopting their own fee increases. Regardless, the increased state fee structure will result in higher local health department reimbursements to the state for those local agencies that provide environmental health regulatory services.

The impacts of the proposed fee increases on small businesses will be varied. The proposed fees schedules generally reflect a typical increase of \$20 to \$100 for an annual operating license. Most FSRL fees have not kept pace with the rate of inflation for the past several years and, in general, the current and proposed annual license fee burdens are small. The proposed fees will increase operating costs for small businesses. However, the annual impact of most fees is small – particularly when evaluated in respect to the rate of inflation. A small business impact analysis determined that the proposed fees increases will be at a level well below the revenue and expense increases brought about by the change in the previous year's consumer price index.

Based on input from regulated industry representatives, the financial burden will be less on those businesses that comply with state codes and act to protect public health and safety. A greater fiscal burden will be borne by those establishments that require repeated re-inspections and operate without licenses. Small business revenues should not be impacted by these fee increases.

The proposed rule will have a positive fiscal effect on state government. The proposed fee increases should raise Food Safety and Recreational Licensing program revenue to a level where, for an approximately two-year period, the program's revenue will support program operating expenses. Despite losing permanent full-time employee positions and keeping operating costs increases at a level lower than that of inflation, current program fee revenue is not adequate to support the FSRL program. The proposed fee increases will allow the FSRL program to once again cover its operating costs.

The proposed rule will have an indeterminate fiscal effect on units of local government. Those units that do not provide environmental health regulatory services at the local level will feel no effect. Those local governments that provide EH regulatory services will experience a fiscal effect. However the effects will vary widely depending on local fee structures and how local fees are tied to state fees. In general, the proposed rule change will result in a larger amount of EH regulatory service reimbursement revenue being sent to the state.

The proposed rule will have indeterminate and highly varied effects on small businesses. As discussed above, the proposed rule contains increased FSRL program fees and

more fee revenue will be collected from small businesses. However, the FSRL program fees have not kept pace with inflation and, in general, the annual license fee represents a very small fraction of a business' annual operating expenses. In addition, a greater portion of the fee burden will be borne by those establishments who require greater regulatory oversight. At the suggestion of regulated industry representatives, a lesser amount of the fee burden will be placed on those small businesses who observe their due diligence and who operate in compliance with the appropriate public health and safety codes.

State fiscal effect

Increase existing revenues. Increase in costs.

Fund sources affect

PRO

Local fiscal effect

Indeterminate.

Local government units affected

Counties and cities

Private sector fiscal effect

Indeterminate.

Notice of Hearings

Natural Resources

Fish, Game, etc., Chs. NR 1— CR 08–074

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 23.09 (2) (intro.), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 23.28 (3), 27.01 (2)(j), 29.014 (1), 29.039 (1), 29.041 and 227.11 (2) (a), Stats., interpreting s. 23.22 (2) (a), Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 40, Wis. Adm. Code, relating to the identification, classification and control of invasive species. The order creates rules for the identification, classification and control of invasive species, as part of the department's state-wide program to control invasive species required under s. 23.22 (2), Stats. Section 23.22 (1) (c), Stats., defines "invasive species" to mean nonindigenous species whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

Hearing Information

The hearings will be held on:

- | | |
|---|---|
| August 14, 2008
Thursday
at 10:00 a.m. | Gathering Waters/Glacier's Edge
Conference Room
DNR South Central Region Hdqrs.
3911 Fish Hatchery Road
Fitchburg |
| August 14, 2008
Thursday
at 3:00 p.m. | Room 141
DNR Southeast Region Hdqrs.
2300 N. Dr. Martin Luther King Jr.
Drive
Milwaukee |
| August 15, 2008
Friday
at 1:00 p.m. | Lake Michigan Room
DNR Northeast Region Hdqrs.
2984 Shawano Avenue
Green Bay |

August 19, 2008 Tuesday at 1:00 p.m.	Room B19 & B20 State Office Building 3550 Mormon Coulee Road La Crosse
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August 20, 2008 Wednesday at 2:30 p.m.	Large Conference Room DNR Northern Region Hdqrs. 810 W. Maple Street Spooner
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August 26, 2008 Tuesday at 1:00 p.m.	Council Chambers Wausau City Hall 407 Grant Street Wausau
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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 Ms. Kelly Kearns at (608) 267-5066 with specific information on your request at least 10 days before the date of the scheduled hearing.

Submission of Written Comments, Agency Contact Person 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 Ms. Kelly Kearns, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707 or by email to DNRNR40Comments@wisconsin.gov. Written comments may be submitted until September 5, 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 Ms. Kearns.

Analysis Prepared by Dept. of Natural Resources

Statutory authority

Sections 23.09 (2) (intro.), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 23.28 (3), 27.01 (2) (j), 29.014 (1), 29.039 (1), 29.041 and 227.11 (2) (a), Stats.

Statute interpreted

Section 23.22 (2) (a), Stats.

Rule analysis

The proposed rules establish criteria for classifying invasive species, and then list or identify specific invasive species into 2 specific categories (prohibited and restricted) according to those criteria (giving consideration to recommendations from the Wisconsin Council on Invasive Species). The rules prohibit or restrict the transportation (including importation), possession, transfer (including sale) and introduction of invasive species that are listed or identified as "prohibited", with certain exceptions. "Restricted" invasive species are also subject to a conditional ban on transportation, transfer and introduction, but not possession (except for fish and crayfish), with certain exceptions. The rules also allow transportation, possession, transfer or introduction for research, education, identification, control or disposal, or for other specified purposes when authorized by a department permit.

Transportation, possession, transfer and introduction without a permit are not prohibited if the department determines that the transportation, possession, transfer or introduction was incidental or unknowing, and was not due to the person's failure to take reasonable precautions. However,

the rules ban transportation of items or host materials that may carry any invasive species and that are subject to a quarantine by the department, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) or the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS), regardless of whether the transportation was incidental or unknowing.

The rules authorize the department to enter property for the purpose of inspection, sampling and control of prohibited invasive species and allow the department to order persons who own, control or manage property where prohibited invasive species are present to implement approved control measures. If a control order is not complied with and the department undertakes control measures, the rules allow for cost-recovery by the department for the expenses it incurred. In contrast, "restricted" species are not subject to any control requirements, except that persons who grow restricted plant species at a nursery are required to destroy them if the nursery closes.

General preventative measures are also required by the rules, without being specific as to species. These rules limit certain common activities that may function as pathways for the inadvertent introduction or spread of invasive species, unless a permit to engage in the activity has been issued by the department. These include conditional requirements to drain all water from boats, boat trailers, equipment and containers upon their removal from the water; a ban on the transport of live fish and fish eggs away from the water; and restrictions on the transport on public highways of boats, trailers and equipment with aquatic plants or animals attached.

Criteria and procedures for permit application, issuance, administration and revocation are detailed in the rules.

Finally, the rules set out the procedures or mechanisms available to the department under the statutes for enforcement of the rules and of permits issued under the rules.

Comparison with federal regulations

There are no directly comparable federal regulations that address the activities regulated by the proposed rule.

Comparison of rules in adjacent states

Minnesota. Minnesota has invasive species regulations that make it unlawful to possess, import, purchase, transport, or introduce these species except under a permit for disposal, control, research, or education. Minnesota also has a regulated and unlisted species regulation that states "Regulated and unlisted invasive species are legal to possess, sell, buy, and transport, but they may not be introduced into a free-living state, such as being released or planted in public waters." Minnesota's classifications include aquatic plants, fish, invertebrates, mammals and birds. The invasive species laws are similar in scope to Wisconsin's proposed rules, minus the inclusion of terrestrial plants.

Iowa. Iowa has a noxious weed law similar to Wisconsin, but includes many more plant species (25+). The Iowa Noxious Weeds and Iowa Weed Law is rather involved, including roads and railroad regulations, removal and cost issues.

Illinois. Illinois has a noxious weed law similar to Wisconsin's noxious weed law. It defines noxious weed "as any plant which is determined by the State Director of Agriculture, the Dean of the College of Agriculture of the University of Illinois and the Director of the Agricultural Experiment Station at the University of Illinois, to be injurious to public health, crops, livestock, land or other property."

Michigan. Michigan has a noxious weed law similar to Wisconsin, but lists many more species. They also have a law titled *Transgenic and Nonnative Organisms* which lists prohibited and restricted aquatic plants, fish and insects. It seems similar to the proposed rule, again, minus the terrestrial plants.

Summary of factual data and analytical methodologies

The department and the Wisconsin Council on Invasive Species (Council) have been working over the last 2 years to develop rules to classify and regulate invasive species. The Research Subcommittee of the Council developed a detailed set of criteria for assessing the species to be classified. The criteria include:

- a) Potential economic, environmental or human health impacts of the species
- b) Current presence, distribution and abundance in the state
- c) Potential for establishment and spread
- d) Control potential
- e) Socio-economic impacts of the species, both positive and negative

Department staff, with input from the Council and others, developed the lists of species to be assessed based on these criteria. Summaries were written of the available literature on each of those species, specifically with regard to the assessment criteria. These literature summaries were reviewed by land managers and species specialists. Species Assessment Groups (SAGs) were developed to assess the species and to make recommendations to the Council. The SAGs, which were comprised of experts in their respective fields and stakeholder groups, used the criteria for species selection to advise the Council on the placement of species in specific categories. Separate SAGs have been developed for specific categories including:

- a) aquatic plants and algae
- b) woody plants
- c) terrestrial herbaceous plants
- d) fish and aquatic invertebrates
- e) terrestrial vertebrates
- f) terrestrial invertebrates and forest pests

The Council met in October, 2007 and discussed the SAGs' recommendations. For a few species the Council revised the classification recommended by the SAGs. For most species, it agreed with the SAG recommendations.

Analysis and supporting documentation used to determine effect on small business

The Wisconsin Council on Invasive Species' Research Committee identified economics as a criterion for species classifications. Therefore, the literature reviews conducted for each species include socio-economic effects. The category includes: positive aspects the species has on the economy/society; potential socio-economic effects of restricting use or requiring control; direct and indirect socio-economic effects of plant; increased cost to sectors caused by the plant; and effects on human health. The data collected varies greatly by species and is generally qualitative as quantitative data is difficult to acquire.

Most invasive species with high economic importance to agriculture or other businesses are not being proposed for classification or regulation at this time. Department staff has been consulting with industry groups to assess potential impacts of the proposed rules on businesses and ways to minimize any adverse impacts. Permits and exemptions will be allowed for the 2 regulated categories of invasive species (prohibited and restricted).

Species Assessment Groups were established to advise the Council on the classification of invasive species. These groups included representatives of industries affected by the species and those potentially affected by any regulations limiting the use of these species. During the Species Assessment Group meetings, economics were addressed for most species. For instance, in the woody plants group, decisions were in large part based on the number of nurseries that grow a particular plant and how much income they produce from a particular plant or its cultivars. If the number of nurseries that grow a plant was very low or none, the decision was easier to come to consensus on. For example, for the variegated cultivar of Porcelain berry, it was stated that there is only one known Wisconsin grower. That grower makes \$500 per year on the plant and had already stated that it won't bother them if the plant is prohibited.

For some plant species, certain cultivars that are not known to be invasive will be exempted from restrictions. For species that are proposed for the prohibited or restricted listing, permits are available for persons or businesses that have a valid use for the species that can minimize its potential spread. One example is the Asian bittersweet, which is not widely sold as an ornamental, but there are several cut flower farms that have large acreages of this plant for cutting and selling as cut stems. These businesses will be able to apply for permits to continue their activities with some limitations to minimize spread of the seeds.

Initial Regulatory Flexibility Analysis

The proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

Types of small businesses affected

Nursery growers, nursery dealers, garden centers, seed dealers, floriculture growers and retailers will no longer be allowed to grow or sell listed species, unless there is an exception or the business has a permit from the Department. Landscape architects, landscapers and others will no longer be allowed to purchase and plant listed species. Utilities, mowing contractors and others who conduct vegetation maintenance or construction activities may need to modify their practices to prevent the inadvertent spread of listed species. Restoration consultants, vegetation managers and landscape contractors may benefit from this rule. Businesses that transport, possess and transfer raw wood products such as pulp and paper mills, sawmills and firewood dealers may be affected by quarantine rules. Movement of raw, untreated products out of quarantined areas will be restricted. Treatment of raw wood products or restrictions on timing of movement out of a quarantined area may be required.

Description of reporting and bookkeeping procedures required

Permit holders must keep a current, correct and complete record of all permit activities. Permit records may be inspected and copied by the Department at any time. Copies of records must be provided to the Department upon request. Persons who wish to transport, possess or give away a prohibited invasive species for the purpose of identification, control or disposal without a permit must report the location of origin of prohibited invasive species to the Department. Reports must be submitted within 30 days of the person taking possession and must include contact and property owner information, type and detailed location of the species, the purpose for transporting, possessing or giving away the

invasive species, and the final disposition of the invasive species.

Description of professional skills required

Professional skills required to comply with the rule include the ability to identify and distinguish listed invasive species from other species.

Small business regulatory coordinator

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

This estimate focuses on the fiscal effect resulting from implementing ch. NR 40, as distinguished from the effect associated with the underlying authorizing statutory language. This rule will be implemented across several Department programs, including Bureaus in the Divisions of Land, Forestry, Enforcement and Science, and Water. The Department's costs associated with implementing NR 40 are primarily associated with the permitting, site inspection, monitoring and technical assistance activities inherent in the rule. The Department estimates the workload associated with these tasks across the Department to roughly equal the equivalent of 2.00 FTE and \$120,000 annually in salary related costs. In addition, the Department assumes it will incur \$40,000 annually to supply public informational and educational materials regarding the requirements of the rule.

State fiscal effect

Increased costs. May not be possible to absorb within agency's budget. Estimated net annualized fiscal impact: \$160,000.

Local fiscal effect

None

Fund sources affected

SEG

Long-range fiscal implications

None

Notice of Hearing

Transportation

CR 08-072

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 343.02 (1), 343.10, 343.20 and 351.07, Stats., and interpreting ss. 227.11 (2) (a), 343.10, 343.20 and 351.07, Stats., the Department of Transportation will hold a public hearing to consider the amendment of Chapter Trans 117, Wisconsin Administrative Code, relating to the occupational licensing program.

Hearing Information

August 15, 2008 Room 144–B
Hill Farms State Transportation Bldg.
4802 Sheboygan Avenue
Madison, Wisconsin

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

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

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

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 Rhonda Alley, Wisconsin Department of Transportation, Compliance and Restoration Section, 4802 Sheboygan Avenue, Room 301, P. O. Box 7983, Madison, WI 53707–7983. You may also contact Ms. Alley by phone at (608) 264–7002 or e–mail: rhonda.alley@dot.state.wi.us. A copy of the rule may be obtained upon request from the Wisconsin Department of Transportation, Division of Motor Vehicles, Room 351, Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, WI 53707, telephone (608) 266–2237.

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

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted

Sections 227.11 (2) (a), 343.10, 343.20 and 351.07, Stats.

Statutory authority

Sections 227.11 (2) (a), 343.02 (1), 343.10, 343.20 and 351.07, Stats.

Explanation of agency authority

DMV is statutorily charged with responsibility for administering the state’s driver licensing system. This rule making is related to the issuance of restricted (“occupational”) driver licenses to drivers whose operating privileges are suspended or revoked.

Related statute or rule

Sections 49.857(3)(a)3., 343.30, 343.305, 343.31, 343.32, 346.63, 351.07, 767.73(1)(b), 938.34(14q) and 961.50, Stats.

Plain language analysis

This amendment codifies DMV’s longstanding administrative practices related to statutorily required waiting periods following the revocation or suspension of operating privileges.

A recent Waukesha County case involving a repeat drunk driver who sought an occupational license during the minimum mandatory waiting period for a license specified in s. 343.30 (1q) (a) 4., Stats., made the Department aware of the fact that the current administrative rule does not discuss statutory minimum waiting periods for licensing. The proceeding illustrated a need to explain the Department’s procedures with regard to application of the minimum waits for occupational licensing in the administrative rule.

Counsel from the Department of Justice recommended codifying this interpretation with other occupational licensing regulations.

What Are Occupational License Waiting Periods?

Generally, drivers whose licenses are suspended or revoked can apply to DOT for a restricted license (“occupational license”) that permits limited operation of a motor vehicle for up to 12 hours per day, not to exceed 60 hours per week. The licenses specify the area in which the driver may operate motor vehicles, the times at which they may drive, the purpose for which they may drive, such as work or homemaker duties.

Each revocation or suspension imposed by the Department or a court has an occupational license waiting period associated with it. By default, s. 343.10(2)(a)4., Stats., provides that a person must wait 15 days from the beginning of the revocation period before becoming eligible for an occupational license. But, where a different provision of law provides for a different shorter or longer waiting period, that period applies in lieu of the 15–day default. s. 343.10(2)(a)4., Stats. For example, persons whose licenses are suspended under the administrative suspension law do not have to wait at all. s. 343.305(8)(d), Stats. Persons who refuse chemical testing must wait 30, 90, or 120 days depending on the number of prior alcohol offenses the person committed prior to the refusal. Federal law essentially requires Wisconsin to impose one–year minimum waiting periods on drivers who have committed more than 2 alcohol offenses in a 5–year period. s. 343.31 (3) (bm) 3., 4. and 5., Stats., 23 U.S.C. s. 164. Convicted drunk drivers who are not subject to the federal requirement face escalating occupational license periods of up to 90 days.

The waiting period for an occupational license begins on the date the revocation or suspension is imposed and ends after the waiting period has elapsed. Where an appeal or other judicial activity, such as the reopening of a conviction, stays a suspension or revocation, any statutorily required waiting period is also stayed. If the conviction is upheld or reinstated, the Department reimposes the suspension or revocation and the waiting period picks up where it stopped. For example, if 10 days passed between the time a suspension was imposed and the time of appeal, upon re–entry of the conviction, DMV would re–impose the suspension or revocation, and impose the remaining portion of the required waiting period.

Sometimes drivers are convicted of multiple offenses at or near the same time. The offenses may or may not have been one incident or occurrence. Regardless, DMV applies the same occupational license waiting period rules. If the revocation or suspension periods begin simultaneously or nearly simultaneously, the waiting periods may run concurrently. If for some reason, however, the revocations or suspensions begin at different times, the driver will be subject to a waiting period for each revocation or suspension.

In some circumstances, DOT shortens a revocation or suspension because the driver has previously been suspended or revoked under different laws regulating the behavior that led to the driver’s arrest. For example, a driver might be administratively suspended, revoked for refusing chemical tests, and convicted of operating while intoxicated as a result of one arrest. If the driver had one prior conviction for an alcohol–related offense (an offense countable under s. 343.307(1), Stats.) that occurred more than 5 years prior to his arrest for this second offense. The driver would face a 6–month suspension for the administrative suspension, a 2–year revocation for the refusal, and a 12 to 18 month revocation for the OWI conviction. No waiting period would be imposed for the administrative suspension. s.

343.305(8)(d), Stats. A 60–day wait would be imposed for the OWI conviction. s. 343.31(3)(bm)3., Stats. Finally, a 90–day wait would be imposed for the refusal revocation. s. 343.305(10)(b)3., Stats. If the court convicted the person of the refusal and OWI at the same time, their occupational license waiting periods would run simultaneously. If the convictions occur at different times, however, the statutorily required waiting period would be imposed for each revocation. While the refusal revocation would be reduced by the “time served” under the OWI revocation in accordance with s. 343.305 (10) (g), Stats., the driver would have to wait until “[a]fter the first 90 days of the revocation period” passes to obtain an occupational license. s. 343.305 (10) (b) 3., Stats. Nothing in s. 343.305 or 343.30 (1q), Stats., permits occupational license waiting periods to be reduced by other occupational license waiting periods in the same manner that revocation periods are reduced.

Can a Court Waive or Change an Occupational License Waiting Period? No. Court involvement in occupational license decision making is administrative not judicial. State v. Marcus, 259 Wis. 543 (1951); State v. Mollet, 67 Wis. 2d 574 (1975). Both WisDOT and the courts are bound to follow the licensing requirements of s. 343.10, Stats., including the mandatory minimum wait requirements for occupational licensing. Courts can waive or change any *discretionary* decision made by DMV in the licensing process under the procedure set forth in s. 343.10(4), Stats., but statutorily mandated requirements may not be set aside by DMV or a court.

Statutory Inconsistency. In the process of drafting this rule making, the Department discovered that an obsolete statutory reference to CDL occupational licenses remains in s. 351.07(1m), Stats. The issuance of CDL occupational licenses is now prohibited by federal law. 49 CFR 383.73(a)(3); 383.71(a)(7); 49 CFR 384.210. Wisconsin law was changed to conform to this federal requirement in 2003 Wis. Act 33. Section 2541 of that Act amended the existing s. 343.10(2)(c) to remove Department authority to issue occupational licenses permitting operation of commercial motor vehicles. At some point, the Department suggests the obsolete and ineffective language of s. 351.07(1m), Stats., be formally repealed.

Comparison with federal regulations

23 U.S.C. s. 164 provides for “sanctioning” states that do not adopt certain strict driver licensing statutes affecting drunk drivers. One requirement imposed under this statute is that states may not issue occupational licenses to persons who drive drunk twice in any 5–year period until the person has had their operating privileges completely revoked for a full year. Wisconsin’s current statutes have been determined to comply with this requirement.

WisDOT cannot, by administrative rule, change these statutory waiting periods. If the legislature were to change them, the current federal “sanction” for noncompliance would *transfer* an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of 23 U.S.C. § 104(b) from various highway programs to highway safety programs. For federal fiscal year 2008, the federal sanction would transfer 3% of 23 USC 104(b)(1) National Highway System funds, 3% of § 104(b)(3) Surface Transportation Program funds, and 3% of § 104(b)(4) Interstate Maintenance funds to 23 U.S.C. § 402 safety funds. Thus, the “sanction” for not complying with the federal repeat intoxicated driver law would be a loss of slightly more than \$15 million from the highway construction

and maintenance program and a commensurate increase in highway safety monies.

Comparison of rules in the adjacent states

Michigan: Section 257.319(8) of the Michigan Vehicle Code establishes waiting periods for occupational licenses following OWI convictions in that state as follows:

- No waiting period during a license withdrawal for first offense (within 7 years) “driving while impaired.” Under Michigan law, “driving while visibly impaired” is a lesser charge than driving while under the influence of an intoxicant. Michigan Compiled Laws s. 257.319(8)(b).
- No waiting period during a license withdrawal for an underage person convicted of having a BAC between .02 and .08. Michigan Compiled Laws s. 257.319(8)(c). Second offense results in a 90–day suspension with no possibility of an occupational license. Michigan Compiled Laws s. 257.319(8)(d).
- No waiting period for regular vehicle privileges during a withdrawal resulting from a CDL violation involving a BAC between .04 and .08. Michigan Compiled Laws s. 257.319(8)(f).
- 30 days waiting period during a license withdrawal for first offense (within 7 years) operating while under the influence of an intoxicant or operating with any amount of a controlled substance. Michigan Compiled Laws s. 257.319(8)(a)
- 90 days waiting period during a license withdrawal for any of the above–described violations if a minor was in the car. Michigan Compiled Laws s. 257.319(8)(e).

There is a 1–year wait under Michigan law for being involved in various criminal activities, such as issuing a bomb threat under s. 257.319(11) of the Michigan Vehicle Code.

Minnesota: Section 171.30, Minnesota Statutes (2007) prohibits issuance of occupational CDL licenses and imposes the following waiting periods for occupational licenses (called “limited licenses” in that state) as follows:

- 15 days for first offense OWI or refusal Minn. Stat. s. 171.30(subd.2a.(1))
- 60 day wait for persons whose operating privileges are withdrawn for any felony or hit and run. Minn. Stat. s. 171.30(subd. 2.)
- 90 days for second offense OWI within 10 years or 3rd offense in a lifetime. Minn. Stat. s. 171.30(subd. 2a.(2))
- 180 days for second offense refusal of testing within 10 years or 3rd offense in a lifetime. Minn. Stat. s. 171.30(subd. 2a.(3))
- One year for felony injury and homicide by intoxicated use violations. Minn. Stat. s. 171.30(subd. 2a.(4))

The waiting periods are doubled for persons under age 18 or who commit a violation with a BAC greater than 0.20. Minn. Stat. s. 171.30(subd. 2c)

Illinois: Section 6206 A31 of the Illinois statutes establish waiting periods for occupational licenses following OWI convictions in that state as follows:

- No wait for a first OWI. The occupational license must be approved by the court hearing the OWI case. 625 ILCS 6–206.1(a).
- One year wait for second and subsequent offense OWI. The driver must obtain permission for the occupational license from a review panel. 625 ILCS 6–208.1(a)4., 6–208(b)1.
- 3 year wait following second or subsequent refusals, homicide by intoxicated use and other offenses. 625 ILCS

6–208(a)3., 6–208(b)1. The driver must obtain permission for the occupational license from a review panel.

Illinois also imposes escalating waiting periods on persons under age 21 who violate absolute sobriety requirements. 625 ILCS 6–208.2

Iowa: Iowa Code s. 321.215 on “Temporary restricted licenses” covers occupational licensing in Iowa. There are no waiting periods for occupational licenses under Iowa law, though some offenders, such as persons convicted of drug offenses, may be completely ineligible for occupational licensing.

Summary of factual data and analytical methodologies

This proposed rule making would codify longstanding DMV administrative practice with regard to occupational license waiting periods. The promulgation of this regulation does not involve the interpretation of data.

Analysis and supporting documentation used to determine effect on small businesses

This proposed rule making has no effect on small business. The proposed rule simply codifies currently existing WisDOT practice and will not change the law or DMV’s application of the law. Accordingly, any effect on small business will be the same before and after adoption of this proposed rule amendment.

Initial Regulatory Flexibility Analysis

This proposed rule will have no significant effect upon 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.

Anticipated costs incurred by private sector

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

Text of Proposed Rule

SECTION 1. Trans 117.03 (2) (n) is created to read:

Trans 117.03 (2) (n) Any minimum mandatory waiting period required under s. 343.10 (2) (a) 4., Stats., or specified in any other provision of law has expired. The waiting period commences on the date the suspension or revocation is imposed. Each revocation or suspension imposed has its own waiting period. The waiting periods may run concurrently. Where waiting periods do not run concurrently, no credit may be granted for waiting periods resulting from multiple suspensions or revocations arising out of one incident or occurrence. A reduction in the length of a suspension or revocation does not affect the length of the waiting period for an occupational license. An appeal or other judicial action that stays a suspension or revocation also stays the running of any required waiting period for that suspension or revocation.

Submittal of Proposed Rules to the Legislature

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

Commerce

Flammable and Combustible Liquids, Ch. Comm 10

CR 07–029

A rule-making order revising Chapters Comm 2, 10, 14, 47 and 48, relating to flammable, combustible and hazardous liquids.

Commerce

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

CR 08–031

A rule-making order creating Chapter Comm 132, relating to dairy manufacturing facility investment credits.

Financial Institutions

Corporate and Consumer Services

CR 08–041

A rule-making order creating Chapter DFI–CCS 20, relating to video service franchise.

Insurance

CR 08–032

A rule-making order revising sections Ins 3.455, 3.46, and 3.465, relating to long-term care including the long-term care partnership program qualifying policies.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 08–010

A rule-making order revising Chapters NR 20 to 23, relating to fishing on the inland, outlying and boundary waters of Wisconsin.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 08–021

A rule-making order revising Chapters NR 1, 8, 10, 12, 15, 16, 17 and 19, relating to hunting, trapping, captive wild animals, dog training, nuisance animal removal, wildlife rehabilitation and license issuance.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 08–023

A rule-making order revising Chapter NR 46, relating to administration of the forest crop law and managed forest law.

Natural Resources

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

CR 07–110

A rule-making order revising Tables in Chapter NR 105, relating to surface water quality criteria.

Natural Resources

*Environmental Protection – Water Regulation,
Chs. NR 300—*

CR 07–094

A rule-making order revising Chapters NR 320, 323, 328, 329, 341, 343 and 345, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

Natural Resources

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

CR 07–036

A rule-making order revising Chapters NR 439, 400, 440, 446, and 484, relating to the control of mercury emissions from electrical generating units.

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.

Employee Trust Funds

CR 08-016

A rule-making order to revise Chapter ETF 70, relating to the start date for phasing out investment options under the Wisconsin deferred compensation plan and to expand emergency financial hardship withdrawals for beneficiaries. Effective 9-1-08.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 08-012

A rule-making order to revise Chapters NR 20 and 21, relating to the hook and line harvest of lake sturgeon. Effective 9-1-08 and 1-1-09.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 08-013

A rule-making order to revise Chapters NR 10, 12 and 19, relating to deer hunting as it relates to the management of chronic wasting disease. Effective 9-1-08 and 9-1-09.

Transportation

CR 08-029

A rule-making order to revise Chapters Trans 137, 138 and 139, relating to motor vehicle dealer franchise operations, record keeping and trade practices. Effective 9-1-08.

Rules Published with this Register and Final Regulatory Flexibility Analyses

The following administrative rule orders have been adopted and published in the July 31, 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.

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

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

Summary of Final Regulatory Flexibility Analysis

In a general sense, this rule affects producers of all agricultural commodities that are covered by an agricultural marketing order or that may be covered in the future. This rule more specifically affects cherry, mint and ginseng producers. Many of the affected businesses are "small businesses." The effects of this rule are generally insignificant, and there are no adverse effects on small business.

Agricultural producers; general

This rule gives DATCP more procedural flexibility related to the conduct of marketing order referenda and marketing board elections. Under this rule:

- DATCP may use electronic communication to conduct referenda and elections (DATCP is not required to use electronic communication).
- In a marketing board election (but not a marketing order referendum), DATCP may notify producers how to obtain ballots rather than actually mailing ballots to all producers.

DATCP may use these alternative procedures where appropriate. In appropriate circumstances, the alternative procedures may be at least as effective in encouraging producer participation, and may be substantially cheaper. Cost savings may be passed on to marketing boards and individual producers. Cost savings to individual producers will not be significant.

Mint Producers

This rule repeals the current mint marketing order, and eliminates the producer assessments associated with that order. There may be some cost savings to individual mint producers, but the savings will be insignificant. Currently, there are only 14 mint producers in Wisconsin.

Cherry Producers

This rule repeals a current marketing order provision that requires an advisory referendum of cherry producers every 4 years, to determine whether they support continuation of the marketing order. The repeal will save some costs for the marketing board and affected producers. The savings for individual producers will not be significant.

Ginseng Producers

This rule requires ginseng marketing order assessments based on acres in production, rather than sales. Sales assessments are difficult to collect, because most buyers are outside the United States. This rule will charge assessments

based on reported acres in production (verified by aerial photography or other reliable means). Assessments based on acres in production will be more fair and reliable. Some individual assessments will go up, but others will go down. Overall assessments will increase, but there will not be a major financial impact on ginseng producers.

This rule repeals a current marketing order provision that requires an advisory referendum of ginseng producers every 5 years, to determine whether they support continuation of the marketing order. The repeal will save some costs for the marketing board and affected producers. The savings for individual producers will not be significant.

Summary of Comments by Legislative Review Committees

No comments were reported.

Natural Resources **CR 07-013**

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

Summary of Final Regulatory Flexibility Analysis

This rule does not regulate businesses, so will have no regulatory impact on them.

Summary of Comments by Legislative Review Committees

The rule was reviewed by the Assembly Committee on Forestry and the Senate Committee on Environment and Natural Resources. There were no comments on the rule.

Natural Resources **CR 07-076**

A rule-making order revising Chapters NR 406, 407 and 445, relating to hazardous air pollutant emissions associated with agricultural waste and affecting small business. Effective 8-1-08.

Summary of Final Regulatory Flexibility Analysis

The rule extends compliance deadlines and does not impose any new reporting requirements nor does it impose any new compliance requirements. The extended deadlines provide a less stringent schedule for all affected facilities, including small businesses.

Summary of Comments by Legislative Review Committees

The rule was reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. On May 1, 2008, the Assembly Committee on Natural Resources held a public

hearing. The Department did not receive any comments as a result of this hearing.

Natural Resources CR 07-104

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

Summary of Final Regulatory Flexibility Analysis

The ethanol rule will not have a significant economic impact on any ethanol plant, including any that may be considered as a small business, because its overall impact will be to lessen the requirements that apply to such plants. The clarifications of plantwide applicability limitation and replacement unit definitions will not affect small businesses as these are clarifications of existing regulations and are not creating new requirements for major sources.

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. The Assembly Committee on Natural Resources held a public hearing on May 1, 2008. The Department did not receive any comments as a result of this hearing.

Natural Resources CR 07-112

A rule-making order revising Chapter NR 345, relating to general permits for dredging in Great Lakes navigable waterways. Effective 8-1-08.

Summary of Final Regulatory Flexibility Analysis

State statutes require that any person operating motor vehicles and/or removing or disturbing materials on the beds of public navigable waters either qualify for an exemption or obtain a general or individual permit. Small businesses would need to do several activities to comply:

1. Make a self-determination of an exemption using web-based tools provided by the department or describe their activity on an exemption determination request form; or
2. Complete a general permit application; or
3. Complete an individual permit application.

Permit applications are based on the businesses' construction plans and site features. The compliance and reporting requirements are very basic for all applicants.

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. The Assembly Committee on Natural Resources held a public hearing on May 1, 2008.

The Department did not receive any comments as a result of this hearing.

Public Instruction CR 08-001

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

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were reported.

Workforce Development CR 08-009

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

Summary of Final Regulatory Flexibility Analysis

The rule implements the policy and funding provided for the child care subsidy program in 2007 Wisconsin Act 20. The policy of freezing child care rates does not have a significant economic impact on small businesses that are child care providers statewide. Due to interest expressed in the impact of freezing child care rates by the Small Business Regulatory Review Board in 2007, the Department submitted an analysis of this rule implementing the 2008-2009 rate freeze for review under s. 227.14 (2g), Stats. The Board acknowledged receipt of the Department's analysis and the Chair thanked the Department for providing the Board with the opportunity to understand the Department's position regarding the economic impact that the rule will have on small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Workforce Development CR 08-019

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

Summary of Final Regulatory Flexibility Analysis

The rules may affect small business as employing units who may request records, but the rules have no financial impact on these businesses and does not change the types of records they may access. There are no reporting, bookkeeping, or other procedures required for compliance with the rule and no professional skills are required of small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Sections Affected by Rule Revisions and Corrections

The following administrative rule revisions and corrections have taken place in **July 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

Agriculture, Trade and Consumer Protection

Ch. ATCP 140

- S. ATCP 140.01 (1m)
- S. ATCP 140.13 (1) (b)
- S. ATCP 140.14 (2) (d)
- S. ATCP 140.19 (4) (b), (5) (a), (b), (c), (e), (6) (a) and (b)
- S. ATCP 140.20 (2)

Ch. ATCP 141

- S. ATCP 141.09

Ch. ATCP 147 (Entire Chapter)

Ch. ATCP 148

- S. ATCP 148.01 (1)
- S. ATCP 148.06 (1) to (3) and (5)
- S. ATCP 148.09

Natural Resources

Ch. NR 45

- S. NR 45.075

Ch. NR 345

- S. NR 345.03 (10g), (10r), (12m) and (13m)
- S. NR 345.04 (2) (a), (b), (c), (im), (ir), and (j)

Ch. NR 405

- S. NR 405.02 (12) (b), (22) (a), (25k)
- S. NR 405.07 (4) (a)
- S. NR 405.18 (6) (e)

Ch. NR 406

- S. NR 406.04 (3) (e)

Ch. NR 407

- S. NR 407.02 (4) (b)
- S. NR 407.03 (2) (d)
- S. NR 407.14 (1) (intro.) and (1m) (e)

Ch. NR 408

- S. NR 408.02 (13) (b), (21) (e), (29s)

- S. NR 408.11 (6) (e)

Ch. NR 445

- S. NR 445.02 (5) (a)
- S. NR 445.04
- S. NR 445.05
- S. NR 445.07 Table A
- S. NR 445.08 (6) (d) and (10) (b)
- S. NR 445.09 (1) (e)

Ch NR 484

- S. NR 484.05 (17)

Public Instruction

Ch. PI 33 (Entire Chapter)

Workforce Development

Ch. DWD 56

- S. DWD 56.06 (1) (a)

Ch. DWD 100

- S. DWD 100.02 (67) (intro.)

Ch. DWD 140

- S. DWD 140.09 (3) (intro.) and (d)
- S. DWD 140.21 (2), (3)

Ch. DWD 149

- S. DWD 149.001 (2)
- S. DWD 149.01
- S. DWD 149.02
- S. DWD 149.03
- S. DWD 149.04
- S. DWD 149.05
- S. DWD 149.06
- S. DWD 149.07
- S. DWD 149.08
- S. DWD 149.09

Editorial Corrections

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

Natural Resources

Ch. NR 445

- S. NR 445.02 (7)
- S. NR 445.15 (1)

Workforce Development

Ch. DWD 56

- S. DWD 56.02 (11)

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
Adm 45.03 (3)	46.30 (2) (a) 1.	49.265 (2) (a) 1.
Comm 16.01 (1)	101.865	Delete reference
Comm 150.04 (1) (b)	46.30 (2) (a)	49.265 (2) (a)
Game 4.06 (4)	146.50	256.15
HFS 1.07 (1)	46.247 (<i>twice</i>)	49.345 (14) (g) (<i>twice</i>)
HFS 39.03 (23)	146.70 (1) (f)	256.35 (1) (f)
HFS 39.03 (24)	146.70 (1) (g)	256.35 (1) (g)
HFS 39.07 (3)	146.301	256.30
HFS 43.03 (13)	46.03 (7g)	48.47 (7g)
HFS 83.03 (2) (g)	46.95 (1) (a)	49.165 (1) (a)
HFS 88.02 (4) (a)	46.261	48.645
HFS 105.38 (1)	146.50	256.15
HFS 107.23 (3) (a) 4.	146.50 (4)	256.15 (4)
HFS 110.01	146.50 (5) (b), (d) 1., (6) (b) 2., (c), (6n), (8m), (13) (a) and (c)	256.15 (5) (b), (d) 1., (6) (b) 2., (c), (6n), (8m), (13) (a) and (c)
HFS 110.03 (3)	146.50 (1) (am)	256.01 (1)
HFS 110.03 (4)	146.55 (1) (a)	256.01 (2)
HFS 110.03 (5)	146.50 (1) (c)	256.01 (3)
HFS 110.03 (13)	146.55 (4) and (5)	256.12 (4) and (5)
HFS 110.03 (7), (23), (24)	146.50	256.15
HFS 110.03 (40)	146.50 (1) (L)	256.15 (1) (L)
HFS 110.04 (1) (c)	146.50	256.15
HFS 110.04 (2) (c) 3.	146.50 (6) (c) 146.55 (7)	256.15 (6) (c) 256.12 (7)
HFS 110.04 (3) (a)	146.50 146.55	256.15 256.12
HFS 110.045 (1)	146.50 (8m) and (13) (b)	256.15 (8m) and (13) (b)
HFS 110.05 (1) (c)	146.50 (6)	256.15 (6)
HFS 110.05 (1) (f)	146.50 (6) (a) 3.	256.15 (6) (a) 3.

Location of invalid cross-reference	Invalid cross-reference	Correction
HFS 110.05 (4) (d)	146.55 (2m) 146.58 146.58 (1)	256.12 (2m) 256.04 256.04 (1)
HFS 110.05 (5) (e) 1. f.	146.50	256.15
HFS 110.06 (1) (c)	146.50 (6)	256.15 (6)
HFS 110.07 (1) (c) 3.	146.50 146.55 (7)	256.15 256.12 (7)
HFS 110.08 (2) (p)	146.50 (6) (c) 146.55 (7)	256.15 (6) (c) 256.12 (7)
HFS 110.09 (1) (a), (d), (2) (a), (4) (<i>twice</i>)	146.50	256.15
HFS 111.01	146.50 (4) (c), (5) (b), (6) (b) 2., (6n)	256.15 (4) (c), (5) (b), (6) (b) 2., (6n)
HFS 111.03 (2)	146.50 (1) (am)	256.01 (1)
HFS 111.03 (3)	146.55 (1) (a)	256.01 (2)
HFS 111.03 (4)	146.50 (1) (c)	256.01 (3)
HFS 111.03 (11), (11m), (5)	146.50	256.15
HFS 111.03 (14)	146.55 (2) (a)	256.12 (2) (a)
HFS 111.03 (29)	146.50 (1) (L)	256.15 (1) (L)
HFS 111.04 (1) (d), (5) (b) 7., (e) 1. h.	146.50 (6)	256.15 (6)
HFS 111.04 (1) (f)	146.50 (6) (a) 3.	256.15 (6) (a) 3.
HFS 111.04 (4) (bm) 2.	146.55 (2m) 146.58 146.58 (1)	256.12 (2m) 256.04 256.04 (1)
HFS 111.04 (5) (d) 1. d.	146.50 (1) (d)	256.15 (1) (d)
HFS 111.04 (5) (d) 1. f., (e) 1. g., (g) 2. b.	146.50	256.15
HFS 111.04 (5) (d) 1. g.	146.50 (6)	256.15 (6)
HFS 111.05 (1) (d)	146.50 (6)	256.15 (6)
HFS 111.06 (1) (c) 2.	146.50	256.15
HFS 111.07 (2) (p)	146.50 (6) (c) 146.55 (7)	256.15 (6) (c) 256.12 (7)
HFS 111.07 (2) (u) 4.	146.50	256.15
HFS 111.08 (1) (a), (d), (2) (a), (4) (<i>twice</i>)	146.50	256.15
HFS 112.01	146.50 (4) (c), (5) (b), (6) (b) 2., (13)	256.15 (4) (c), (5) (b), (6) (b) 2., (13)
HFS 112.03 (2)	146.50 (1) (am)	256.01 (1)
HFS 112.03 (3)	146.55 (1) (a)	256.01 (2)
HFS 112.03 (4)	146.50 (1) (c)	256.01 (3)
HFS 112.03 (5), (11)	146.50	256.15

Location of invalid cross-reference	Invalid cross-reference	Correction
HFS 112.03 (13)	146.55 (2) (a)	256.12 (2) (a)
HFS 112.03 (29)	146.50 (1) (L)	256.15 (1) (L)
HFS 112.04 (1) (c)	146.50 (6)	256.15 (6)
HFS 112.04 (1) (f)	146.50 (6) (a) 3.	256.15 (6) (a) 3.
HFS 112.04 (4) (b) 2.	146.55 (2m) 146.58 146.58 (1)	256.12 (2m) 256.04 256.04 (1)
HFS 112.04 (5) (b) 4., (d) 1. d.	146.50 (1) (d)	256.15 (1) (d)
HFS 112.04 (5) (d) 1. e., (e) 1. f., (g) 2.	146.50	256.15
HFS 112.05 (1) (d)	146.50 (6)	256.15 (6)
HFS 112.06 (1) (c) 2.	146.50	256.15
HFS 112.07 (2) (a)	146.55 (7)	256.12 (7)
HFS 112.07 (2) (b)	146.50 (6) (c)	256.15 (6) (c)
HFS 112.07 (2) (u) 4., (3) (c)	146.50	256.15
HFS 112.08 (1) (a), (d), (2) (a), (4) <i>(twice)</i>	146.50	256.15
HFS 113.01	146.50 (6g) (a), (13) (a) and (b)	256.15 (6g) (a), (13) (a) and (b)
HFS 113.03 (1m)	146.50 (1) (am)	256.01 (1)
HFS 113.03 (2)	146.50 (1) (c)	256.01 (3)
HFS 113.03 (30)	146.50	256.15
HFS 113.04 (2m) (g)	146.55 (2m) 146.58 146.58 (1)	256.12 (2m) 256.04 256.04 (1)
HFS 113.04 (5) (f)	146.50 (12)	256.15 (12)
HFS 113.04 (10) (b) 4.	146.50	256.15
HFS 113.05 (3) (d) 2., 3. <i>(twice both places)</i>	146.50	256.15
HFS 118.01	146.56 (2)	256.25 (2)
HFS 118.02 (4)	146.50	256.15
HFS 118.02 (5)	146.56 (1r)	256.25 (1r)
HFS 118.03 (1)	146.50 (1) (c)	256.01 (3)
HFS 118.03 (14)	146.50 (8)	256.15 (8)
HFS 118.04 (6) (d) 1. a., c.	146.50	256.15
HFS 118.09 (4) (b)	146.56 (2)	256.25 (2)
HFS 167.01	146.57 (4)	255.35 (4)
HFS 167.02	146.57 (3)	255.35 (3)
HFS 167.04 (1) and (2)	146.57 (3) (a)	255.35 (3) (a)
HFS 167.07 (4)	146.57 (3)	255.35 (3)

Location of invalid cross-reference	Invalid cross-reference	Correction
NR 142.02 (2) (b)	196.98	Delete reference
NR 212.01	283.83 (3)	283.83 (1) (c)
PSC 173.01	146.70	256.35
PSC 173.02 (4)	146.70 (3m) (c) 3. or 6.	256.35 (3m) (c) 3. or 6.
PSC 173.02 (7)	146.70 (3m) (a) 4.	256.35 (3m) (a) 4.
PSC 173.02 (11)	146.70 (3m) (a) 5.	256.35 (3m) (a) 5.
PSC 173.02 (13)	146.70 (3m) (a) 6.	256.35 (3m) (a) 6.
PSC 173.02 (14)	146.70 (3m) (a) 7.	256.35 (3m) (a) 7.
PSC 173.02 (15)	146.70 (3m) (f)	256.35 (3m) (f)
PSC 173.07 (1)	146.70 (3m) (c) 1.	256.35 (3m) (c) 1.
PSC 173.07 (2) (a)	146.70 (3m) (c) 3. or 4.	256.35 (3m) (c) 3. or 4.
PSC 173.07 (2) (b)	146.70 (3m) (c) 5. and 6.	256.35 (3m) (c) 5. and 6.
PSC 173.08 (1) (c)	146.70 (3m) (c) 3.	256.35 (3m) (c) 3.
PSC 173.08 (1) (e)	146.70 (1) (gm) 146.70 (3) (b) 1.	256.35 (1) (gm) 256.35 (3) (b) 1.
RL 180.02 (6)	146.50 146.50 (8)	256.15 256.15 (8)
SFP 2.15 (7) (b)	146.50	256.15
Tax 2.11 (4)	71.34 (1) (e)	71.34 (1k) (e)
Tax 11.05 (3) (u)	146.70 (3)	256.35 (3)
Tax 11.66 (5) (b)	146.70 (3)	256.35 (3)
Trans 100.02 (4m)	146.50 (1) (e)	256.01 (5)
Trans 100.02 (6)	146.53 (1) (d)	256.01 (9)
Trans 309.02 (2)	146.50 (1) (c)	256.01 (3)
Trans 309.02 (4)	146.50 (1) (e)	256.01 (5)
Trans 309.02 (6)	146.50 (1) (h)	256.01 (8)
Trans 309.02 (9)	146.50 (1) (j)	256.01 (11)
VA 2.02 (3) (c)	21.49	321.40
VFF-Emt 1.03 (5), (16)	146.50	256.15
DWD 12.26 (2)	46.261	48.645
DWD 17.01 (1)	103.005 (17)	Delete reference
DWD 42.03 (3) (c)	757.17	Delete reference
DWD 59.05 (intro.)	20.445 (3) (cm), 20.445 (3) (md)	20.437 (2) (cm) and (md)
DWD 218.01	21.80 (7) (b) (<i>twice</i>)	321.65 (7) (b) (<i>twice</i>)