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(Formerly Workforce Development)

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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

2. **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
Hearing Date: August 27, 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

- 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: July 1, 2010 or the date on which permanent rules take effect, whichever is sooner.

Note: The expiration date was incorrectly stated in the July 31, 2008 Register.

Transportation

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

Exemption From Finding of Emergency

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

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

Scope Statements

Health Services

(Formerly Health and Family Services)

Health, Chs. HFS 110—

Subject

Revises Chapter HFS 195, relating to hotels, motels, and tourist rooming houses and Chapter HFS 197 relating to bed and breakfast establishments to incorporate rules for department inspections for carbon monoxide emissions from sealed combustions units.

Policy Analysis

2007 Act 205 requires the department to regularly inspect sealed combustion units for carbon monoxide emissions in hotels, tourist rooming houses, and bed and breakfast establishments pursuant to rules promulgated by the department under s. 254.74 (1) (am), Stats., as created by 2007 Act 205. The Act requires the rules to include conditions under which the department may issue orders to correct violations under s. 101.149 (8) (a), Stats.

The inspections are not required if facilities install and maintain carbon monoxide detectors under s. 101.149 (2) and (3), Stats. The inspections are also not required if the sealed combustion units are under manufacturer’s warranty against defects.

The department intends to promulgate emergency rules effective October 1, 2008, followed by promulgation of permanent rules relating to inspections of sealed combustion units for carbon monoxide emissions.

Statutory Authority

Sections 227.11 (2) (a), 250.04, 254.74, 254.69, and 254.85, Stats.

Entities Affected by the Rule

Owners, operators, and customers of lodging establishments and local agent health departments.

Comparison with Federal Regulations

There appear 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

100 hours.

Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises Chapter NR 25, relating to commercial fishing in outlying waters and the minimum catch requirement for licensees.

Objective of the Rule

The Department has for the past 30 years implemented a limited entry policy in which minimum catch requirements are used to identify inactive Lake Michigan commercial

fishers. Recently legislation was introduced (AB 634 and identical SB 357) to eliminate the use of those minimum catch requirements.

Policy Analysis

The minimum catch rule serves two important purposes — to prevent Wisconsin from moving towards a property–rights based commercial fishery, and to help DNR maintain an economically viable and stable commercial fishery by identifying inactive licensees. For these reasons, the minimum catch rule must be retained unless it is replaced with meaningful annual relicensing criteria.

In revisions to the commercial fishing laws that took effect in 1978, the Legislature established the basis for limited entry in Wisconsin’s Great Lakes commercial fisheries. Section 29.519 provides that, “The department may limit the number of license issued under this section. . .” Also, “The department may promulgate rules defining the qualifications of licensees. . .” Section 29.519 also provides that, “The [commercial fishing] boards shall assist the department in establishing criteria for identifying inactive licensees.”

In non–statutory provisions of Ch. 418, Laws of 1977, Section 923, we find that “The intent of the legislature in revising commercial fishing laws is to provide for multi–use management of the Great Lakes fishery, including an economically viable and stable commercial fishery and an active recreational fishery. To reach this management objective, the legislature recognizes that it may be necessary to limit participation in the commercial fishery and to limit the harvest of commercially fished species . . .”

Under Wisconsin’s limited entry policy, the number of Lake Michigan commercial fishing licenses that can be issued in a year is limited to the number issued the previous year. In order to identify inactive licensees, applicants for annual renewal of licenses must meet several criteria. Since 1989 one criterion has been the minimum catch requirement: unless prevented by unavoidable circumstances, each licensee must 1) harvest a specified minimum poundage of all species taken from one of three geographic zones or 2) harvest an amount exceeding 30 times the average daily harvest of all species from one of the zones. Although few license renewal applications have been denied for failure to meet the minimum catch requirement, it remains problematic for some commercial fishers.

In the past decade the requirement has been modified twice, and we are now proposing to make further modifications to assure that the requirement is reasonable in the changing conditions that the industry faces, including fluctuating abundance of target fish populations. We will look at all alternatives for identifying inactive licensees.

Statutory Authority

Sections 29.014, 29.041 (1), 29.519 (1m) (c) and 227.11 (2) (a), Wis. Stats.

Entities Affected by the Rule

The interests of commercial fishers will be affected. This issue has been controversial at times in the past.

Comparison with Federal Regulations

There are no applicable federal regulations.

Estimate of Time Needed to Develop the Rule

One month FTE or approximately 160 hours (combined effort by the Great Lakes Fisheries Specialist, a staff attorney, field biologists, and wardens).

Agency Contact Person

William Horns
101 S. Webster St.
Madison, WI 53707; 608–266–8782
william.horns@wisconsin.gov

Pharmacy Examining Board**Subject**

Revises section Phar 8.12, relating to faxing schedule II controlled substance prescriptions to nursing home eligible patients who reside at home.

Objective of the Rule

The proposed rule would clarify that pharmacies and pharmacists serving patients who meet eligibility criteria for nursing home placement are authorized to dispense prescriptions faxed by practitioners or their agents for schedule II controlled substances notwithstanding the patients' home–based residence.

Policy Analysis

Except under limited circumstances, the board's rules regarding controlled substance prescriptions transmitted by facsimile do not explicitly allow a pharmacist to dispense a schedule II controlled substance pursuant to a prescription order transmitted by facsimile machine. One of the exceptions allows dispensing when the order is written for a patient in a long term care facility and faxed by the practitioner or the practitioner's agent. The rule imposes a barrier to pharmaceutical care for nursing home eligible patients living at home whose practitioners personally deliver or mail the prescriptions to the pharmacy prior to dispensing. The resulting burden on the practitioners, pharmacists and patients induced by the attempt to limit opportunities for diversion of schedule II controlled substances is viewed as excessively onerous in view of the benefits of the proposed rule.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a) and (d), Stats.

Entities Affected by the Rule

Practitioners, pharmacists, and pharmacies licensed in Wisconsin and nursing home eligible patients residing at home.

Comparison with Federal Regulations

Chapter 21 CFR 2 (b) 25 defines Long Term Care Facility (LTCF) as a nursing home, retirement care, mental health or other facility or institution which provides extended health care to resident patients. DEA's position is that the "resident patients" terminology creates the need for a waiver.

Estimate of Time Needed to Develop the Rule

It is estimated that 100 staff hours will be needed to promulgate the rule.

Revenue**Subject**

Revises sections Tax 1.12, 2.03, 2.04, 2.08, 4.001, 7.001, 8.001, 9.001, and 11.01, relating to electronic funds transfer; corporation returns; information returns and wage statements; returns of persons other than corporations; motor vehicle, alternate fuels, and general aviation fuel tax return and refund claim forms; fermented malt beverage tax return and refund claim forms; intoxicating liquor report, tax return, and refund claim forms; cigarette and tobacco products report, tax return, and refund claim forms; and sales and use tax, local exposition tax, and premier resort area tax return forms.

Objective of the Rule

The objective of the proposed rule is to expand the taxes, fees, and other amounts required to be paid or deposited using electronic funds transfer (EFT) and the returns, reports, and refund claims the department may require be filed electronically.

Policy Analysis

A new policy is being proposed, whereby the department will expand its EFT and electronic filing requirements. If the rules are not changed, they will not reflect proposed department policy.

Statutory Authority

Section 227.11 (2) (a), Stats.

Entities Affected by the Rule

Entities involved in the preparation and filing of any of the types of returns, reports, or refund claims indicated above or involved in the payment or deposit of any of the tax types associated with those returns, reports, or refund claims.

Comparison with Federal Regulations

The department is not aware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Estimate of Time Needed to Develop the Rule

The department estimates it will take approximately 100 hours to develop this rule order.

Submittal of Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection

CR 08–075

On July 25, 2008, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order makes minor and technical rule changes in Chapters ATCP 3, 10, 12, 21, 29, 30, 31, 33, 40, 50, 51, 55, 60, 70, 75, 90, 92, 103, 118, 123, 124, 125, 136 and 160.

Agency Procedure for Promulgation

The department will hold public hearings on this rule after the Rules Clearinghouse completes its review. The department’s Office of Legal Counsel is primarily responsible for this rule.

Contact Information

If you have questions, you may contact Karen Schultz at 608–224–5023.

Employee Trust Funds

CR 08–079

On July 31, 2008, the Department of Employee Trust Funds submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order repeals and recreates section ETF 40.01, relating to continued group health insurance coverage of an insured dependent after the death of the insured employee or annuitant.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 26, 2008. The Department’s Benefit Services Bureau, in the Division of Retirement Services, is primarily responsible for this rule.

Contact Information

Bonnie Cyganek, Director
Benefit Services Bureau
608–267–9037
bonnie.cyganek@etf.state.wi.us

Financial Institutions

Securities

CR 08–077

On July 21, 2008, the Department of Financial Institutions submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters DFI–Sec 1 to 9, 31, 32 and 35, relating to securities definitions, securities registration procedures and registration exemptions, registration of securities broker–dealers and investment advisers, fraudulent practices, general provisions, administrative procedure and forms, and franchise law disclosure document requirements.

Agency Procedure for Promulgation

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

Contact Information

Randall E. Schumann, Legal Counsel
Division of Securities
608–266–3414

Government Accountability Board

CR 08–078

On July 31, 2008, the Government Accountability Board submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order repeals and recreates Chapter GAB 5, relating to ballot security.

Agency Procedure for Promulgation

The Board will promulgate this rule pursuant to the 30–day notice procedure under s. 227.16 (2) (e), Stats.

Contact Information

George A. Dunst
Staff Counsel
608–266–0136

Natural Resources

Environmental Protection – Wis. Pollutant Discharge Elimination System, Chs. NR 200–

CR 08–076

On July 30, 2008, the Department of Natural Resources submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter NR 219, relating to analytical methods used for Wisconsin Pollutant Discharge Elimination System compliance monitoring.

Agency Procedure for Promulgation

A public hearing is scheduled for August 27, 2008.

Contact Information

Diane Drinkman
Bureau of Science Services
Diane.Drinkman@wisconsin.gov

Rule–Making Notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

CR 08–075

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rules that make minor remedial drafting changes in Chapters ATCP 3, 10, 12, 21, 29, 30, 31, 33, 40, 50, 51, 55, 60, 70, 75, 90, 92, 103, 118, 123, 124, 125, 136 and 160.

Hearing Information

The Department will hold a public hearing at the time and place shown below.

Tuesday, August 26, 2008

1:00 p.m. to 3:00 p.m.

Dept. of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Room 472

Madison, WI 53718

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by Friday, August 22, 2008, by writing to Karen Schultz, Office of Legal Counsel, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–5023. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearing.

Analysis Prepared by the Dept. of Agriculture, Trade and Consumer Protection

Statutes interpreted

Sections 91.80, ch. 92, 93.06 (1n), 93.23, 94.64 (3r) (b) and (4a) 5., 94.645, 94.681 (3), 94.685 (3) (a) 2., 94.69, 94.703 (3) (a) 2., 94.704 (3)(a) 2., 95.55 (6), 97.02, 97.03, 97.09 (4), 97.20, 97.22, 97.24, 97.30, 97.42, 97.43, 97.52, 98.03 (2), 98.18 (2), 98.07, 98.26 (1), 100.20, 100.45, 160.19, 160.21, 160.23, 160.25, 281.16, 344.576 (3) (a), 345.285 (5w) (a) 1., Stats.

Statutory authority

Sections 92.05 (3) (c) and (k), 92.14 (8), 92.15 (3) (b), 92.16, 92.18 (1), 93.06 (1n) (c), 93.07 (1), 94.645 (3), 94.69 (1), 95.55 (6), 97.09 (4), 97.20 (4), 97.22 (8), 97.24 (3), 97.30 (5), 97.42 (4), 97.52, 98.03 (2), 98.07 (4), 98.18 (2), 100.20 (2), 100.45 (5) and (5) (e), 160.19 (2), 160.21 (1), 281.16 (3) (b) and (c), 344.576 (3) (c), 345.285 (5x), Stats.

Explanation of agency authority

DATCP has general authority, under s. 93.07(1), Stats., to adopt rules to interpret laws under its jurisdiction. DATCP also has specific rulemaking authority under the statutes listed above. This rule makes minor changes to a wide range of rules administered by the DATCP. The rule changes are, for the most part, adopted under the same authority used to adopt the existing rules.

Related rules or statutes

This rule is not substantially affected by other statutes or rules, other than those identified in this rule.

Rule contents

This rule makes minor or technical changes to a number of current DATCP rules. This rule does all of the following:

Electronic Processing of License Applications; Cost Recovery

Authorizes DATCP to assess a \$3 fee for electronic licensing transactions (in addition to other license fees), to cover DATCP's electronic licensing costs. Electronic processing, if offered, is offered as a voluntary option for license applicants.

Agricultural Chemical Cleanup Program; Surcharge Adjustment

Reduces current agricultural chemical cleanup program surcharges paid by pesticide and fertilizer license holders, consistent with 2007 Wisconsin Act 20 (biennial budget act). DATCP has already implemented the reduced statutory surcharges (this rule merely conforms current rules to the new statutory amounts).

Atrazine Use Regulations

Revises the format of current maps showing some of the land areas where application of atrazine pesticides is currently prohibited by rule (this rule does not change the actual prohibition areas).

Restores a provision inadvertently deleted from the atrazine rule in 1993, when the rule was modified for other reasons. The restored provision allows farmers to apply an additional 0.5 lbs. of atrazine per acre on medium– or fine–textured soils (up to 1.5 lbs. per acre rather than 1.0 lb. per acre), if no atrazine was applied in the preceding year. The restored provision is consistent with how DATCP has always administered the atrazine rule, so there will be no change in actual use practices.

Land and Water Conservation Program

Updates technical standards incorporated by reference in current land and water conservation rules (ATCP 50). This rule does not substantially alter current standards or requirements.

Gives DATCP more latitude to extend land and water conservation funding for county cost–share contracts with landowners that were signed, but not completed, during the preceding year (extends signing deadline from December 1 to December 31).

Extends the current mid–year deadline for counties to file cost–share reimbursement requests with DATCP (from June 1 to July 1).

Updates current standards for the certification of agricultural engineering practitioners under the land and water conservation program, consistent with current standards published by the United States Department of Agriculture, Natural Resource Conservation Service (“NRCS”).

Updates current standards used by certified soil testing laboratories under the land and water conservation program, consistent with updated standards published by the University of Wisconsin–Extension and University of Wisconsin–Madison.

Meat Inspection

Corrects erroneous cross–references to federal meat inspection regulations in state meat inspection rules.

Dairy Inspection

Changes, from 7 days to 14 days, the time period within which dairy plants must report high somatic cell counts in

goat milk and take follow-up samples related to high bacterial counts.

Weights and Measures

Updates technical standards incorporated by reference in current packaging and labeling and weights and measures rules (ATCP 90 & 92), including the latest standards published by the National Institute of Standards and Technology.

Car Rental Notices

Incorporates statutory provisions requiring car rental companies to notify prospective renters if the rental company may charge the renter's credit card for forfeitures and other costs incurred but not paid by the renter for nonmoving traffic violations (parking tickets).

Mobile Home Park Rent Disclosures

Clarifies, but does not change, current rules related to disclosure of rent and related charges in mobile home parks. This rule clarifies that park operators may disclose charges by means of a price schedule, rate or formula, provided that the renter can readily determine the amount to be paid.

Fair Premium Aids

Authorizes DATCP to pay county and district fair premium aids based on total county and district fair premiums paid (current rule requires payment based on total premiums less entry fees).

Other Technical Changes

Modifies current *notes* to reflect the fact that rules and related documents are now filed with the legislative reference bureau, not the revisor of statutes or secretary of state (the revisor of statutes office was eliminated by 2007 Wis. Act 20).

Corrects minor errors in current rules.

Makes minor organizational, drafting and terminology changes.

Comparison with federal regulations

Some of the rules affected by this rule are based on federal regulations or standards including:

- Soil and water conservation standards published by NRCS.
- Regulations under the federal meat inspection program. State standards must be at least "equal to" the federal standards.
- Dairy standards under the Interstate Pasteurized Milk Ordinance (PMO)
- Weights and measures standards issued by the national institute of standards and technology.

This rule is consistent with relevant federal regulations and standards.

Comparison with rules in adjacent states

Surrounding states have programs similar to some of the programs affected by this rule, including cooperative state–federal programs related to soil and water conservation, meat inspection, dairy regulation, and weights and measures regulation. Current Wisconsin programs in these areas are substantially equivalent to programs in surrounding states. This rule does not have a significant impact on programs in this state or other states, or create any significant disparity between this state and other states.

Summary of data and analytical methodologies

This rule does not depend on any complex analysis of data. This rule merely makes minor or technical changes to current rules.

Standards incorporated by reference

This rule updates references to certain technical standards that are incorporated by reference in current rules. Updated technical standards include the following:

- Soil and water conservation practice standards published by NRCS (see ch. ATCP 50 *Appendix G* attached).
- Weights and measures standards published by NIST, including the 2008 editions of NIST Handbooks 44 and 130.

Pursuant to s. 227.21, Stats., DATCP has requested permission from the Department of Justice to incorporate the updated technical standards by reference in this rule. Copies of the updated standards that are incorporated by reference in this rule will be kept on file with DATCP and the Legislative Reference Bureau.

Effect on Small Business

This rule will not have any significant impact on small business or other business. This rule makes minor and technical "housekeeping" changes that will not have a significant impact on business standards, costs or operations.

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

Environmental Impact

This "housekeeping" rule will have no significant environmental impact.

Fiscal Estimate

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

- This rule will allow the department to charge license applicants an additional \$3 for electronic processing of licenses, if applicants choose that option. However, that option is not currently available except on a few simple licenses.
- This rule adjusts current agricultural chemical cleanup program surcharges paid by fertilizer and pesticide license holders to conform to the new (lower) amounts specified by statute. However, DATCP has already implemented the new amounts, so this rule will not change the surcharge amounts currently being paid.
- This rule will not have a substantial impact on DATCP administrative or operating costs.

Submission of Written Comments

DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until Friday, September 5, 2008 for additional written comments. Comments may be sent to the Office of Legal Counsel at the address below, by email to Karen.schultz@wisconsin.gov or online at:

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

Agency Contact

Questions or comments related to this rule may be sent to the following address:

Karen Schultz
Dept. of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53718
Telephone: (608) 224–5023
Karen.Schultz@wisconsin.gov

Copy of Proposed Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer

Protection, Office of Legal Counsel, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–5023 or emailing Karen.schultz@wisconsin.gov. Copies will also be available at the hearings. To view the proposed rule online, go to:

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

Notice of Hearing

Commerce

*Financial Resources for Businesses and Communities,
Chs. Comm 104—
Housing Assistance, Chs. Comm 150—*

EmR0823

NOTICE IS HEREBY GIVEN that pursuant to ss. 560.02 (4), 560.04, 560.045, and 560.9809, Stats., the Department of Commerce will hold a public hearing on emergency rules revising Chapters Comm 108 and 154 relating to emergency assistance grants in the community development block grant program.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
August 27, 2008 Wednesday At 10:00 A.M.	Thompson Commerce Center Third Floor, Room 3B 201 West Washington Avenue Madison, Wisconsin

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the emergency rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until September 5, 2008, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E–mail comments should be sent to srockweiler@commerce.state.wi.us. If e–mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

Analysis Prepared by Department of Commerce

Statutes interpreted

Sections 560.02 (4), 560.04, 560.045, and 560.9809

Statutory authority

Sections 560.02 (4), 560.04, 560.045, and 560.9809

Explanation of agency authority

The Department is the designated agency to administer the federally funded Small Cities Community Development Block Grant (CDBG) Program for Wisconsin. These CDBG

funds can be used statewide, except in “entitlement” communities that also receive annual CDBG funding directly from the US Department of Housing and Urban Development (cities with populations above 50,000 and, with only a few exceptions, Milwaukee, Dane, and Waukesha Counties). Federal regulations require that the Department submit an Annual Plan describing the State’s intended use and distribution of the CDBG funds based on any State regulations and public input. The Wisconsin administrative rules that are authorized by the above statutes set forth the criteria, process, and limitations for distributing CDBG funds.

Related statute or rule

The Department has statutes and rules for other programs associated with housing assistance and community development, but none of these programs fund emergency assistance for housing repair or public infrastructure/facility repair or replacement.

Plain language analysis

The rules in this order repeal current limits on emergency assistance grants in the CDBG Program. 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.

Comparison with federal regulations

24 CFR 570.483(d) allows the Department to use CDBG funds for activities that address the national objective of meeting an “urgent local need.” The criteria under this objective specify that the funded activities must be designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community, and which are of recent origin or recently became urgent. In addition, the Department must determine that the state grant recipient is unable to finance the activity on its own, and that other sources of funding are not available to carry out the activity.

Comparison with rules in adjacent states

Michigan. Michigan does not set aside or limit the use of CDBG funds for emergency assistance in either state statute or administrative rule or in their Annual Plan submittal to HUD. In the event of a disaster, Michigan amends their Annual Plan to enable CDBG funds to be used for emergency assistance as needed.

Minnesota. Minnesota does not set aside CDBG funds for emergency assistance in either state statute or administrative rule or in their Annual Plan submittal to HUD. In the event of a disaster, Minnesota amends their Annual Plan to enable CDBG funds to be used for emergency assistance. The Minnesota Small Cities Development Program does have a policy to limit CDBG funding to \$1.4 million per community for each event.

Iowa. Iowa does not set aside or limit the use of CDBG funds for emergency assistance by state statute or administrative rule. The current Iowa Annual Plan sets aside 5 percent of the CDBG annual allocation for emergency assistance. Iowa amends their Annual Plan if additional funds are needed.

Illinois. Illinois does not set aside or limit the use of CDBG funds for emergency assistance in either state statute or administrative rule or in their Annual Plan submittal to HUD. In the event of a disaster, Illinois amends their Annual Plan to

enable CDBG funds to be used for emergency assistance as needed.

Summary of factual data and analytical methodologies

There were no factual data or analytical methodologies used to develop the proposed rules.

Analysis and supporting documents used to determine effect on small business

There were no supporting documents used to determine the effect on small business, and an economic impact report was not prepared.

Effect on Small Business

The amended rules are not expected to adversely affect small business. Grants to repair or replace public infrastructure and facilities would only have a positive impact.

Initial regulatory flexibility analysis

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

Businesses that receive payments from funds which become available because of the rules.

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

No new reporting, bookkeeping or other procedures are necessary for compliance with the rules.

Types of professional skills necessary for compliance with the rules.

No new professional skills are necessary for compliance with the rules.

Do the rules have a significant economic impact on small businesses?

No

Small business regulatory coordinator

Any inquiries for the small business regulatory coordinator for the Department of Commerce can be directed to Carol Dunn, at telephone (608) 267–0297, or at cdunn@commerce.state.wi.us.

Environmental Analysis

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

Fiscal Estimate

Summary

Due to limited funding, the overall number of CDBG grant awards is not expected to change significantly. The increased workload for grant specialists processing and underwriting more emergency assistance grants will be offset by a decrease in non–emergency grant applications. Therefore, the proposed rule revisions are not expected to have any significant fiscal effect on the Department.

The proposed rules will not impose any significant costs on local governments or the private sector, because CDBG emergency assistance grants also include administrative funds for the local government.

State fiscal effect

None

Local fiscal effect

None

Long–range fiscal implications

None known.

Agency Contact Person

Jeanne Storm, Wisconsin Department of Commerce, Division of Housing and Community Development, P.O. Box 7970, Madison, WI, 53707–7970; telephone (608) 264–6110; e–mail: Jeanne.Storm@Wisconsin.gov

Copy of Proposed Rule

The emergency rules and an analysis of the rules are available on the Internet by entering “Comm 108” in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at srockweiler@commerce.state.wi.us, or at telephone (608) 266–0797 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

Notice of Hearing

Employee Trust Funds

CR 08–079

NOTICE IS GIVEN That a public hearing will be held on a proposed rule to repeal and recreate section ETF 40.01, relating to continued group health insurance coverage of an insured dependent after the death of the insured employee or annuitant.

Hearing Information

August 26, 2008 Dept. of Employee Trust Funds
Tuesday Conference Room GA – lower floor
at 1:30 p.m. 801 West Badger Road
Madison, Wisconsin

Persons wishing to attend should first come to the main reception area up the stairs, or elevator, from the building’s main entrance.

Analysis Prepared by the Department of Employee Trust Funds

Statute interpreted

Sections 40.02 (25) (b) 3. and 40.51 (1), Stats.

Statutory authority

Sections 40.03 (2) (ig) and 227.11 (2) (a), Stats.

Explanation of agency authority

Under s. 40.03 (2) (ig), Stats., the DETF Secretary, with the approval of the Group Insurance Board, may promulgate rules required for the administration of the group health insurance plan. As provided by s. 227.11 (2) (a), Stats., each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule

The existing s. ETF 40.01, Wis. Admin. Code, is repealed by this rule–making.

Plain language analysis

Under s. 40.51, Stats., the Group Insurance Board provides group health insurance programs for eligible state employees

and the eligible employees of local units of government in Wisconsin that elect to participate. Eligible Wisconsin Retirement System annuitants may also elect to be covered. The group health insurance plans are required to include provisions for continuation of coverage that, at a minimum, comply with s. 632.897, Stats.

Section 632.897 (b) 3., Stats., generally requires that if a member dies while covered by group health insurance, then the spouse or dependent who was also covered through the member must be permitted to continue coverage under the group policy, or convert to individual coverage. Under s. 632.897 (2) (d), Stats., the plan sponsor or group policyholder must give written notice to the insured surviving dependents of their right to continuation coverage within 5 days after learning of the death of the insured employee or annuitant. The notice must include the amount of the payment required and the manner, place and time for making payments. As provided by s. 632.897 (3) (a), Stats., each surviving insured dependent, or the parent in the case of a minor, then has 30 days from the date of the notice to apply for continuation coverage and make the initial required payment. If this application and payment are timely received, then the coverage continues without interruption. Continuation coverage may be terminated if the surviving dependent established residence outside Wisconsin, fails to make timely payment of a required premium or becomes eligible for similar coverage under another group policy. If no such events intervene, then a minimum of 18 months of continuation coverage must be allowed. After that, the insurer may compel the survivor to convert to an individual policy in order to continue coverage.

Under the current s. ETF 40.01 (1), Wis. Admin. Code, an application for health care coverage must be received from the surviving dependent within 90 days after the death of the insured employee (or annuitant) in order for the surviving dependent to continue his or her group health insurance coverage that was in effect prior to the death.

An exception to the 90–day deadline allows the surviving dependent at least 30 days to apply after the Department sends out the standard packet of materials relating to death benefits. This exception conforms to the intent of s. 632.897 (3) (a), Stats. The death benefit packet contains the “Survivor Eligibility to Continue Health Insurance” form (ET–6203) giving notice of the right, if any, to continue group coverage, the deadline for applying and premium payment options. A form ET–4701 schedule of premium rates, the Group Health Insurance brochure (ET–4112) and “Health Insurance Application,” form (ET–2301) are all also included in the packet. The 30–day grace period assures that a delay in preparing and mailing out a death benefit packet will not deprive the surviving insured dependent of the opportunity to continue coverage.

In an effort to avoid unintended termination of health insurance coverage, Department staff will often write and telephone surviving dependents to remind them of the need to apply for the coverage within the 90–day deadline. If the 90–day deadline passes and all previously received premiums have been exhausted, the surviving dependents’ health insurance coverage is terminated.

Terminated surviving dependents often call or write Department staff to explain why they failed to timely apply and to attempt to obtain coverage. The Department staff estimate from anecdotal data that roughly 98% of surviving insured dependents wish to continue the health insurance coverage. The main reason for not wishing to continue coverage is likely to be that the surviving dependent is already

covered under other health coverage which the surviving dependent prefers. This can occur, for example, when two spouses both work and each has family health insurance benefits through their separate employers.

This rule–making is intended to address both customer service and Department work–load issues. The first goal is to reduce or eliminate interruptions in coverage for surviving dependents who wish to continue health coverage. Secondly, the Department would like to reduce staff time spent soliciting applications, reminding surviving dependents of the application deadline and handling telephone calls and correspondence with health care providers and surviving dependents concerning health coverage that was involuntarily terminated due to inaction by the surviving dependent.

This rule–making provides that health insurance coverage for surviving insured dependents will automatically continue despite the death of the insured employee or annuitant who had family health insurance coverage in effect. This is accomplished by having the family coverage remain in effect despite the death. Generally, only those persons actually covered under the family coverage when the insured employee or annuitant died will be covered and no new dependents may be added to the coverage. However, a provision in the rule allows the Group Insurance Board to identify, in the group health insurance contract, certain other persons who may be added to the continuing family coverage. The Board may allow coverage for certain persons the Board identifies who also fall into one of the following two broad categories:

- Persons previously insured under the group insurance board health insurance contract as dependents of the deceased insured employee, who would have been eligible to resume such coverage if the insured employee had lived. This category might include a child who took a break from school after age 19 and thereby lost coverage, but then became a full–time student while under age 25.
- A child of the deceased insured employee who first became eligible for coverage under the group insurance board health insurance contract after the death of the insured employee. This category might include a child who was born after the insured employee died.

The rule designates who will be responsible for making decisions about the health insurance coverage following the insured employee’s death. Generally this will be the deceased employee’s or annuitant’s surviving spouse, even if other surviving dependents are not children of, or otherwise dependent upon, the surviving spouse. Absent a surviving spouse, the responsible person will be the oldest of the deceased employee’s or annuitant’s surviving insured dependents, or that person’s guardian. The responsible person will have control over the health insurance coverage and will make the annual dual choice decisions and decide if and when to convert the coverage from family to single coverage or back again.

The duration of coverage for a surviving insured dependent other than a spouse is to be established by the terms of the group health insurance contract. A person may outgrow the status of dependent, or no longer qualify by ceasing to be a full–time student or by recovering from disability, for example. On the other hand, a surviving spouse is entitled to insurance coverage under this rule for life, unless the surviving spouse sooner cancels the coverage voluntarily or coverage is cancelled for non–payment of premiums.

To avoid permanent loss of coverage due to voluntary cancellation, a special provision in the rule protects surviving insured dependents who have other comparable health

insurance coverage and inherited the deceased insured employee's balance of accumulated sick leave conversion credits. Under s. 40.05 (4) (b) or (be), Stats., surviving insured dependents may elect to delay using the deceased employee's or annuitant's accumulated sick leave conversion credits to pay for the group insurance board's insurance and instead rely on their other comparable health insurance coverage. Under this rule, such a decision is treated as a temporary suspension of the continued coverage under this rule, rather than as a voluntary termination of coverage that would bar any future coverage.

Since family coverage will continue beyond the death of the insured employee or annuitant, the rule also provides for payment of the insurance premiums. First, any remaining advance payments are used. Next, any unused accumulated sick leave conversion credits are applied. Then a deduction is made from any Wisconsin Retirement System annuity being paid to the surviving spouse or the responsible person. If there is no annuity, or it is too small to cover the premiums due, then the surviving spouse or responsible party must pay the premiums directly. Failure to do so will result in cancellation for non-payment.

One effect of this rule-making is that the death of an employee will no longer result in termination of insurance coverage for the surviving insured spouse or dependents. Therefore, the death will not trigger rights to continuation coverage under other state or federal law. However, it is not the purpose of this rule-making to deprive anyone of legal rights to continuation coverage. Therefore, to avoid any unintended consequences, a provision has been included in the rule protecting a person's eligibility and right to apply under applicable state or federal health insurance continuation law.

Comparison with federal regulations

A federal requirement for group health plans to offer continuation coverage to certain individuals whose coverage might otherwise end was enacted in the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). COBRA amended the federal tax code, the Employee Retirement Income Security Act (ERISA) and the Public Health Service Act to require continuation coverage. Governmental plans are exempt from ERISA and the regulations of the U.S. Department of Labor regulations based on that Act. See 29 U.S.C. §1003(b)(1). The U. S. Treasury regulations on COBRA continuation coverage expressly except state and local group health plans from the regulations. See 26 CFR 26 C.F.R. § 54.4980B–2 A–4(b)(3).

However, as the IRS expressly noted in 26 CFR 26 C.F.R. § 54.4980B–2 A–4(d), group health plans maintained by state or local governments are generally subject to parallel continuation coverage requirements that COBRA added to the Public Health Services Act. These COBRA continuation provisions apply to states that receive funds under the Public Health Service Act, as well as to their political subdivisions and to agencies or instrumentalities of such states and their political subdivisions. See the Notice published by the U.S. Department of Health and Human Services, 52 FR 604 (January 7, 1987).

The U.S. Department of Health and Human Services has not issued regulations concerning COBRA continuation coverage for the group health plans of state and local governments. If regulations are issued on continuation coverage requirements for state and local governments, then the H&HS regulations must conform to the similar regulations issued by the Treasury and the Department of Labor. See the final rules notice published by the Department

of Labor, 69 FR 30084 (May 26, 2004), footnote 4, citing House Conference Report No. 99–453 at 563 (1985). The Department of Labor COBRA continuation regulations begin at 29 CFR §2590.606–1 and the related Treasury regulations begin at 26 CFR § 54.4980B–1.

Meanwhile, the COBRA continuation provisions of the Public Health Services Act are codified beginning at 42 U.S.C. §300bb–1. Under 42 USC § 300bb–3(1), the death of a covered employee is a “qualifying event” giving rise to continuation rights for the surviving spouse and dependent children insured under the employee's coverage if the coverage would terminate because of the death. The term “covered employee,” as defined by 42 USC § 300bb–8 (2), includes retired employees. Within 30 days, the employer is required to notify the plan administrator of the employee's death and within 14 days after notification, the plan administrator must send notice of COBRA continuation rights to the affected surviving spouses or dependent children who were covered under the plan. See 42 U.S.C.A. § 300bb–6(2) and (4)(A).

During the “election period” the surviving spouse or dependent child who would otherwise lose coverage under the plan because of the employee's death, is entitled to elect continuation coverage. For this purpose, the “election period” is defined by 42 USC §300bb–5 to be a period of 60 days, beginning on the later of (a) the date of the notice provided to the surviving spouse (or dependent child), or (b) the date coverage would end as a result of the employee's death.

Comparison with rules in adjacent states

A check on WestLaw for rules pertaining to health insurance and surviving dependents found no similar rules in Illinois, Iowa, Michigan or Minnesota except the following:

Illinois. Illinois Admin. Code title 80 § 2160.130 is part of the administrative code pertaining to employee benefits for public officials and employees. The rule relates specifically to the local government health plan. This rule defines the term “survivor” to mean a person who is a surviving dependent of a person who satisfies the definition of “employee” or “annuitant.” A survivor is included within the definition of the term “member.” The term survivor appears again in Ill. Admin. Code title 80 § 2160.310, concerning enrollment in the local government health plan. Section 2160.310 a) provides that local units of government may offer coverage under the plan to survivors, as well as employees, annuitants and dependents.

Iowa. Iowa Admin. Code r. 11–60.1(8A) 60.1(3) d. and e. include provisions of a 1992 early retirement incentive program that applied to persons 59 and over at termination, with 20 years of service in the Iowa Public Employees' Retirement System or the Public Safety Peace Officers' Retirement, Accident, and Disability System, who were also participating in one of the state's group health or dental insurance plans at the time of termination. Both provisions concern the state's payment of a share of premiums and the effect of a permitted switching between family and single coverage, and back again. Upon the death of a program participant before age 65, state's share of health or dental premium, or both, continues to be paid for the benefit of the surviving insured dependents until the end of the month before the deceased participant's 65th birthday. The dependents could then purchase a conversion policy. Changes in the contract from family to single, and back, are permitted. However, the state's share of premiums will be reduced to the single rate upon a change from family to single coverage and will thereafter be capped at the single rate even if the contract is subsequently changed to family coverage.

Michigan. No similar rule.

Minnesota. Minn. R. 2740.0100 subp. 25 is part of a rule of the Minnesota Department of Commerce related to the Minnesota Comprehensive Health Insurance Act of 1976. It defines the term “individual insured” to include the surviving spouse or surviving dependent of a covered employee. The rule references Minnesota Statutes, section 62A.17, subdivision 6, a provision related to continuation coverage. The term “individual insured” does not appear elsewhere in the rule on comprehensive health insurance.

Summary of factual data and analytical methodologies

In the most recent six month period, from January through June 2008, the Department processed 2,445 annuitant deaths, or an average of 360 per month. In 312 of those 2,445 cases, (or 52 cases per month on average) the annuitant was survived by individuals who had been covered under the annuitant’s ch. 40 group health insurance. These figures are consistent with the same period in 2007. About 95% of surviving insured dependents make an effort to keep the health insurance coverage in effect after the annuitant’s death.

The proposed rule will directly affect the surviving insured dependents of insured employees and annuitants with family health insurance coverage, when the date of the employee’s or annuitant’s death occurs after the effective date of the rule.

The rule–making will also affect the administration of coverage under the group health insurance programs by Department of Employee Trust Funds staff, the third–party administrative contractor and the private Health Maintenance Organizations and similar insurers who agree to participate in the group health insurance program.

Analysis and supporting documents used to determine effect on small business

The Group Insurance Board’s authority with respect to group health insurance for employees of the state and participating local governments is stated in ss. 40.51, 40.52 and 40.53, Stats. The group health insurance provided under this authority does not cover employees in the private sector.

Anticipated Costs Incurred by Private Sector

None.

Effect on Small Business

No effect.

Fiscal Estimate

This rule–making has no fiscal impact.

Submission of Written Comments

Written comments on the proposed rule may be submitted to Robert Weber, Chief Counsel, Department of Employee Trust Funds, 801 W. Badger Road, P.O. Box 7931, Madison, WI 53707–7931. Written comments must be *received* at the Department of Employee Trust Funds no later than 4:30 PM on Wednesday, August 27, 2008.

Agency Contact Person

Please direct any questions about the proposed rule to Bonnie Cyganek, Director, Benefit Services Bureau, Division of Retirement Services, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 267–9037. E–mail address: bonnie.cyganek@etf.state.wi.us.

Copy of Proposed Rule

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust

Funds, P.O. Box 7931, Madison WI 53707–7931, telephone (608) 266–1071.

Notice of Proposed Rule–Making Government Accountability Board CR 08–078

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f), 5.93, and 227.11 (2) (a), Stats., and interpreting ss. 5.84, 5.86, 5.87, 5.90, 5.905, 5.91, 7.23, 7.51, and 9.01 Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the State of Wisconsin Government Accountability Board will adopt the following rule as proposed in this notice, repealing and recreating Chapter GAB 5, relating to ballot security.

The proposed rule will be adopted without public hearing unless within 30 days after publication of this notice, on **August 15, 2008**, the Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

Analysis Prepared by Government Accountability Board

Statutes interpreted

Sections 5.84, 5.86, 5.87, 5.90, 5.905, 5.91, 7.23, 7.51, and 9.01, Stats.

Statutory authority

Sections 5.05 (1) (f), 5.93 and 227.11 (2) (a).

Explanation of agency authority

The Government Accountability Board’s rule on ballot security, under ss.7.23 and 7.51, Stats., has become outdated because of advances in technology and because of heightened administrative and public concerns about ballot security in light of recent security and chain–of–custody problems in elections both in Wisconsin and in other states. To address those concerns and to update ballot security in Wisconsin, the Board proposes to repeal and re–create chapter GAB 5, the ballot security rule.

Related statute or rule

Sections 5.66, 5.85, 5.86, 5.87, 5.90, 7.10, 7.15, 7.24, 7.37, 7.53, 9.01, and 12.13, Stats.

Plain language analysis

The proposed rule provides the requirements for maintaining the security of ballots that are cast at an election and maintaining the integrity of the tabulation of those ballots in the canvass of an election.

Comparison with federal regulations

Federal law does not apply to the preparation, printing, or security of ballots. Federal law does require that materials, including ballots, relating to any election in which a federal office is on the ballot, must be preserved for not fewer than 22 months.

Comparison with rules in adjacent states

Illinois, Iowa, Michigan, and Minnesota all statutorily require that after ballots have been counted, they shall be secured in a sealed envelope or other container in such a manner that no ballot may be removed without breaking the seal on that container. The ballots and other election documents in those sealed containers are returned to the custody of the local election official who will hold them until they may be destroyed under state and federal law.

Generally, unlike Wisconsin’s rule, the law in all four states provides for the retention of unused ballots until destruction of all ballots is authorized by state and federal law.

Summary of factual data and analytical methodologies

Adoption of the rule was predicated on federal and state mandate rather than on any factual data or analytical methodology.

Analysis and supporting documents used to determine effect on small business

The rule will have no effect on small business, nor any economic impact.

Effect on Small Business

The creation of this rule does not affect business.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Agency Contact Person

George A. Dunst, Staff Counsel, Government Accountability Board, 17 West Main Street, P.O. Box 2973, Madison, Wisconsin 53701–2973; Phone 266–0136; george.dunst@wisconsin.gov

Submission of Written Comments

Written comments may be submitted to the Government Accountability Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701–2973; (elections.state.wi.us)

Text of Rule

The Government Accountability Board proposes an order to repeal and recreate Chapter GAB 5, relating to ballot security, and interpreting sections 5.84, 5.86, 5.87, 5.90, 5.905, 5.91, 7.23, 7.51, and 9.01, Stats.

SECTION 1. Chapter GAB 5 is repealed and re–created to read:

Chapter GAB 5

Ballot and Electronic Voting System Security

GAB 5.01 Ballot security. (1) In this section:

- (a) “Board” means the government accountability board.
- (b) “Certificate of performance compliance” means the document provided by voting equipment vendors certifying that the equipment complies with the performance requirements of s. 5.91, Stats.
- (c) “Chain–of–custody” means the recorded movement and location of election ballots from the time of delivery of the ballots to the municipal clerk or board of election commissioners until the destruction of the ballots is authorized under s. 7.23, Stats.
- (d) “Custodian” means the election official who is authorized by chs. 5 to 12 to take possession and control of the ballots from the time of delivery of the ballots to the clerk or board of election commissioners until destruction of the ballots is authorized under s. 7.23, Stats.
- (e) “Electronic voting system” has the meaning given in s. 5.02 (4m), Stats.
- (f) “Firmware” means the computer software stored in read–only memory or programmable read–only memory.
- (g) “Modem” means a device for transmitting data between two computers over telephone or other communication lines.
- (h) “Results report” means the print–out of voting data by a piece of electronic voting equipment.
- (i) “Software” has the meaning given in s. 5.905 (1), Stats.

(2) Within the requirements of s. 7.51 (3), Stats., the terms “secure” and “seal” shall be interpreted together to mean that the voted ballot container must be closed in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to the ballot container.

(3) Within the requirements of s. 7.51 (3) (a), Stats., a ballot container shall be considered “sealed” or “locked,” only if no voted ballot may be removed from or deposited into the container, and no other form of access to the ballots inside may be gained without leaving visible evidence of that entry or access into the container.

Ballot bags shall be sealed with a tamper–evident, serialized numbered seal. The serial number shall be recorded on the signed ballot container certification (EB–101) attached to the bag. Serial numbers of the seals also shall be recorded on the Inspectors’ Statement (EB–104). Ballot boxes or containers shall have all potential openings secured in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to that ballot container. Ballot boxes or containers shall have attached a signed ballot container certification (EB–101).

(4) A sealed ballot container shall not be considered “secured” unless it is stored in a manner in which access to the container is limited only to the clerk of the election district, board of election commissioners, or to persons authorized by the clerk or the board of election commissioners, and access to which is not available to any other person.

(5) Whenever the custodian is required to open the ballot container and unseal the ballots as part of a central count proceeding under s. 5.86, Stats., board of canvass proceeding under Ch. 7, Stats., audit of electronic voting equipment after an election under s. 7.08 (6), Stats., recount or an appeal of a recount under s. 9.01, Stats., or as part of a public records request under s. 19.35, Stats., before opening the container the custodian shall record in the minutes of the proceeding whether the container is sealed and shall record the serialized number of the seal. The custodian shall make a record of the entry and of the ballot review. Upon completion of the review, the custodian shall re–secure them in the manner provided in s. 7.51, Stats., unless destruction is authorized under s. 7.23, Stats.

(6) Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. Destruction of the ballots authorized under s. 7.23, Stats., requires shredding, incineration, or some other form of obliteration of the ballots.

(7) At the time of a recount, the serial numbers on the seals of the ballot container shall be compared with the serial numbers written on the signed ballot container certification (EB–101). All containers shall be compared in a recount. The ward numbers and the results of the serial number verification shall be recorded in the minutes of the recount.

(8) The municipal clerk or board of election commissioners shall securely maintain all ballots from the time of receipt from the printer or county clerk through delivery to the polling place.

GAB 5.02 General electronic voting system security procedures. (1) These procedures apply to all electronic tabulating voting equipment memory devices, including prom packs, memory cards, or any other removable memory devices that can be programmed or functioned to store and transfer ballot images or tabulation data.

(2) Throughout the life of the electronic voting system, the municipal or county clerk shall maintain control of all memory devices in a secure manner at all times. With the

agreement of the municipal clerk or board of election commissioners, the county clerk or county board of election commissioners may store memory devices in a secure location. The municipal clerk or board of election commissioners shall secure all keys to the electronic voting equipment.

(3) For each election, there shall be a separate, written chain–of–custody record for each programmed memory device used with an electronic voting system. Each transfer shall be logged in the written chain–of–custody record.

(4) Each programmed memory device shall have or be assigned a unique and permanent serial number. If the memory device does not have a permanent serial number affixed by the manufacturer, a clerk shall, if possible, affix to the device a serial number or unique identifier.

(5) The municipality shall use controlled, serialized seals that are tamper–evident and resistant to accidental breakage along with a written record of all seals and associated serial numbers.

(6) For each election, the municipal clerk shall record on the Inspectors’ Statement (EB–104), which memory devices and which serialized tamper–evident seals are assigned to particular voting stations or units.

GAB 5.03 Pre–election procedures. (1) The clerk who has possession of the electronic voting systems or memory devices shall ensure that the equipment and memory devices have been secured properly since the previous election.

(2) Memory devices shall be programmed to print a list of the software and firmware versions of the electronic voting system on each beginning–of–election–day zero report under s. 5.84 (2), Stats.

For electronic voting systems that cannot accommodate this requirement, the software and firmware information shall be recorded from the system start–up screen, either by municipal or county staff during the pre–election testing under s. 5.84 (1), Stats., or by election inspectors on Election Day under s. 5.84 (2), Stats.

(3) The records for the pre–election test under s. 5.84, Stats., pre–recount test under s. 5.90, Stats., and Election Day reports under ss. 7.51 and 7.53, Stats., must be maintained by the appropriate clerk or board of election commissioners.

(4) Except when necessary to program, test, or operate the electronic voting and/or programming equipment, any point by which access can be gained to the system controls must be closed and locked or secured with a tamper–evident seal that can be tracked using a unique and permanent serial number. The appropriate clerk shall maintain a written record of the serial numbers required by this subsection.

(5) After a memory device is programmed, tested, and delivered to the municipal clerk for the election, it shall be immediately and continuously maintained in a secure location with controlled access limited only to users authorized by the clerk or board of election commissioners.

Upon insertion of a memory device into its assigned unit, it shall be sealed against unauthorized access with a serialized, tamper–evident seal that can be tracked using a unique and permanent serial number. The municipal clerk or board of election commissioners shall record the serial numbers on the Inspectors’ Statement (EB–104).

(6) When applicable, for each election the municipal or county clerk or board of election commissioners shall obtain a signed “Certificate of Performance Compliance: Memory Device Security” from each voting equipment manufacturer

that provides programming services or memory devices to the municipality or county.

(7) The municipality shall take reasonable precautions to ensure the security of the equipment between the time it leaves the possession of the clerk or board of election commissioners to be delivered to the polling place, and the time the chief inspector assumes possession at the polling place on Election Day.

GAB 5.04 Election–day procedures. (1) Before any ballots are cast on any piece of voting equipment, the integrity of the tamper–evident seals shall be verified by the chief election inspector verifying that the tamper–evident seal serial number on the Inspectors’ Statement (EB–104) matches the tamper–evident seal serial number contained on the electronic voting equipment. Any irregularity or discrepancy between the two numbers shall be reconciled before using the equipment.

(2) After the polls have opened, ballot removal from an optical scan machine or paper roll removal or replacement on a direct recording electronic (DRE) machine shall be conducted with at least two election inspectors (or other sworn election team members appointed by the municipal clerk or board of election commissioners) present. The removal process, the names of the election inspectors or sworn election team members, and the time of removal must be recorded on the Inspectors’ Statement (EB–104).

(3) After the polls have closed, election officials shall print a results report before breaking any seal on the equipment and before the removal of the memory device from any piece of voting equipment. If additional reports other than the results reports are required, these reports shall also be printed before breaking any seal on the equipment and before the removal of the memory device.

(4) The chief election inspector shall compare the serial numbers of all security seals, then verify by initialing the Inspectors’ Statement (EB–104). Any additional seals used during the election must also be recorded on the Inspectors’ Statement (EB–104).

(5) The memory device shall be secured in a separate, tamper–evident sealed container or envelope by the chief election inspector. The memory devices shall be promptly returned to the municipal or county clerk or board of election commissioners.

(6) If vote results are transmitted by modem, the municipal clerk or board of election commissioners may access the memory device for transmission of those results, but shall reveal the memory device in a secured envelope or container.

(7) If removal of the memory device is not required, the device may remain sealed in the voting equipment. The serial numbers of the security seals shall be verified and initialed on the Inspectors’ Statement (EB–104).

GAB 5.05 Post election procedures. (1) After each election, the clerk or board of election commissioners responsible for storing the voting equipment shall conduct an inspection to ensure all system access points are closed, locked, and secured.

(2) At each post–election meeting of the municipal board of canvassers, the members shall verify that the tamper–evident serial numbers from the voting equipment have been recorded on five Inspectors’ Statements (EB–104) or 10% (whichever is greater) of the total statements, and have been initialed by the Chief Election Inspector. The county board of canvassers shall verify ten Inspectors’ Statements. All Inspectors’ Statements (EB–104) shall be verified by the

appropriate board of canvassers in a recount. Proper documentation shall be maintained.

GAB 5.15 Alternate security procedures. (1) The Government Accountability Board recognizes the need for flexibility when implementing these procedures, and acknowledges that alternative means may be used to achieve and ensure an acceptable level of electronic voting equipment security.

(2) The Board will consider requests from counties to implement alternative security procedures.

(a) The county clerk, or the municipal clerk or board of election commissioners through the county clerk or county board of election commissioners, shall submit a written request to implement alternative security procedures to the Board's director and general counsel.

(b) The request shall describe the proposed security procedures in detail and include any documentation such as logs, flow charts, and certification forms.

(c) The director and general counsel may approve the use of alternative security procedures for one election cycle.

(d) The Board shall review the director and general counsel's approval of any alternative security procedures and may authorize continued use of those procedures.

Notice of Hearing

Natural Resources

Environmental Protection – Wis. Pollutant Discharge Elimination System, Chs. NR 200—

CR 08–076

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2), 281.19 (1), 283.31, 283.55 (1), 299.11 and 299.15 (2), Stats., interpreting ss. 283.31, 283.55 (1), 299.11 and 299.15 (2), Stats., the Department of Natural Resources will hold a public hearing on revisions to Chapter NR 219, Wis. Adm. Code, relating to analytical methods used for Wisconsin Pollutant Discharge Elimination System (WPDES) compliance monitoring. The proposed rule incorporates revisions to the federal regulations and adds methods developed by U.S. EPA and approved by their Alternate Test Procedure program.

Hearing Information

The hearing will be held on:

August 27, 2008	Video conference participation will be available at:
Wednesday	Room 8F
9:00 a.m.	State Office Building
	101 E. Wilson Street
	Madison
	Room 211
	Telecomm & Distance Learning
	Resources Comm. Arts Center
	UW–Stevens Point
	1101 Reserve Street
	Stevens Point

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 Diane Drinkman at (608) 264–8950 with

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

Analysis Prepared by Department of Natural Resources

Statutes interpreted

Sections 283.31, 283.55 (1), 299.11 and 299.15 (2)

Statutory authority

Sections 227.11 (2), 281.19 (1), 283.31, 283.55 (1), 299.11 and 299.15 (2)

Rule analysis

The analytical methods contained in 40 CFR Part 136, which are used by laboratories in support of WPDES compliance monitoring, have not been substantively updated in several years. Many of the methods that were deleted by EPA were originally published twenty or more years ago. Use of newer laboratory instruments and methods have been hindered by the lack of inclusion in the Federal rule. In March of 2007, EPA published updated analytical test methods. The proposed rule revisions to ch. NR 219 incorporate these updated methods for the WPDES permit program.

The department is also incorporating methods that have been approved through the Office of Water's Alternative Test Procedure program, including the luminescence technique for dissolved oxygen, and selected methods from the 21st Edition of "Standard Methods for the Examination of Water and Wastewater". The tables also include updated references from "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW–846, Updates III and IV", the "2007 Annual Book of Standards" from ASTM and developed by instrument manufacturers.

The maximum holding time requirement for some tests, as listed in Table F, has been clarified. The current language, "analyze immediately", has been interpreted to mean within 15 minutes or less of sample collection. This has been clarified in the federal rule so that the holding time for these tests is now "analyze within 15 minutes". Other changes to this table include identification of holding times for the various matrices that require dioxins and furan analysis, and allowing metals samples to be transported to a laboratory without pH adjustment. Preservation requirements for available and total cyanide have been expanded to describe procedures that are recommended for removal or suppression of known cyanide interferences.

This proposal also changes language in s. NR 219.04 (2) and (3) to make this language consistent with the thermal preservation requirements contained in Table F.

Comparison with federal regulations

The federal counterpart to this rule is 40 CFR 136. On March 12, 2007, EPA published "Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Analysis and Sampling Procedures; Final Rule". In addition, on March 26, 2007, EPA published the "Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge; Final Rule." The proposed revisions to ch. NR 219 incorporate these changes and are consistent with the federal regulations.

Comparison with rules in adjacent states

The States of Illinois, Iowa, Michigan and Minnesota have wastewater programs delegated to them from the U.S. Environmental Protection Agency. The Illinois laboratory certification program required laboratories to update their scope of accreditation to incorporate the revisions starting

June 1, 2007. The IL Environmental Protection Agency did not require rulemaking to address these updates. The Iowa Department of Natural Resources incorporated the changes at 40 CFR 136 in rulemaking initiated in November 2007; the changes were effective January 9, 2008. The State of Michigan does not certify laboratories that perform analyses of wastewater. The Minnesota laboratory certification program allowed laboratories to use the analytical methods listed in the federal rules on the effective dates, April 11 and 25, 2007, respectively. Minnesota’s program limits analytical methods to those from the 20th and 21st Editions and on–line version of “Standard Methods for the Examination of Water and Wastewater”, and limits ASTM methods to the most–recently published version. All other sources of analytical methods were incorporated as described in the federal rule. MN Department of Public Health did not require rulemaking to address these updates.

Summary of factual data and analytical methodologies

This proposed rule revision brings Wisconsin up to date with the current federal rules that establish analytical test methods.

Analysis and supporting documents used to determine effect on small business

Many of the analytical methods that are being deleted have been replaced with methods that are nearly identical. The quality control requirements for analyses are established in ch. NR 149; these will not change with updating methods tables. For several analyses, newer methods and techniques have been added. It is possible for a laboratory to change the analytical method it uses and not incur additional costs or, in some cases, actually reduce costs.

The requirements imposed upon small business include following approved analytical methods listed in the rule. There are no reporting requirements in NR 219. The small businesses that will likely be impacted by this rule are commercial laboratories certified under ch. NR 149. The vast majority of these laboratories likely follow approved analytical methods that are being maintained in this chapter. The certification status for each small business that is currently certified for oil and grease was examined to determine whether they would require to change their procedures. Only one laboratory will be required to change their procedure for oil and grease analyses, if they choose to maintain their ability to perform these analyses. All other small business laboratories already hold certification for both oil and grease methods.

This proposal does not change the frequency of analytical testing, nor does it address any change in reporting, schedule or deadline requirements. Consequently, the impacts to small businesses will be minimal.

Effect on Small Business

Pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses.

Initial regulatory flexibility analysis

Types of small businesses affected

Certified commercial laboratories

Description of reporting and bookkeeping procedures required

Laboratories are required to use approved analytical methods for analyses. There are no specific bookkeeping requirements.

Description of professional skills required

The rule requires levels of professional skills commensurate with the complexity of the tests performed by a laboratory, the breadth of operations, and the degree of sophistication of the analytical instrumentation used. Analyses covered by the rule are performed by personnel with a wide spectrum of credentials, from wastewater operators and laboratory technicians with a basic high school science education to degreed chemists, biologists and other scientists. The rule does not specifically require academic degrees or a minimum number of years of experience for those involved in its implementation.

Small business regulatory coordinator

The Department’s Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266–1959.

Environmental Impact

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

Local governmental units that operate laboratories that perform analyses in support of a discharge permit that reference analytical methods that have been deleted may incur small costs to update their procedures. When the change is simply to another method, or where there are no changes to the analytical process, costs will be minimal. Some facilities may opt to use newer techniques that take less time, or have minimal calibration protocols. This rulemaking does not require laboratories to make expenditures related to newer techniques to maintain compliance.

Five sanitary district laboratories currently maintain certification to perform oil and grease determinations utilizing freon as an extraction solvent; one district also performs the hexane extractable materials method. The four remaining laboratories will either be required to add the newer method or stop performing these analyses. Each of these have indicated that they will no longer perform this testing in house due to time constraints, complexity of the method, or the cost to implement the new method. Deletion of the oil and grease (freon) technique will also result in cost–savings to laboratories. One laboratory indicated its most recent purchase of freon, 60 pounds, cost over \$1,400. Since a comparable volume of hexane costs about \$480, a laboratory would be able to perform almost three times the number of hexane extractable materials analyses for the same cost. Alternatively, these facilities could opt to subcontract these analyses to a commercial laboratory. It is likely that subcontracting option when compared to performing these analyses in–house when only a small

State fiscal effect

There will be no state fiscal impact based on this rule revision.

Local fiscal effect

Costs: Indeterminate. Increases or decreases in costs: Permissive.

Types of local governmental units affected

Villages, cities, and sanitary districts

Long–range fiscal implications

None

Submission of Written Comments, Contact Person, and Copy 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. Diane Drinkman, Bureau of Science Services, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 29, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Drinkman.

Notice of Hearing**Revenue
CR 08–065**

NOTICE IS HEREBY GIVEN That pursuant to sections 125.03 (1) (b) and 125.545 (6) (b), Stats., and interpreting sections 125.02 (23), 125.06 (11m), and 125.545, Stats., the Department of Revenue will hold a public hearing to consider the creation of sections Tax 8.03 and 8.05, relating to wine collectors and small winery cooperative wholesalers.

Hearing Information

The hearing will be held:

August 26, 2008 Events Room
at 1:00 p.m. State Revenue Building
2135 Rimrock Road
Madison, Wisconsin,

Analysis Prepared by the Department of Revenue**Statutes interpreted**

Sections 125.02 (23), 125.06 (11m) and 125.545, Stats.

Statutory authority

Sections 125.03 (1) (b) and 125.545 (6) (b), Stats.

Related statute or rule

Sections 125.01, 125.02 (23), 125.06 (11m), 125.545, and 185.043 (2), Stats.

Summary of the effect of the proposed rule order

This proposed rule order will:

- Specify the standards for eligibility as a wine collector and the means by which a wine collector will register with the department;
- Detail the form and manner by which a wine collector will notify the department of the intent to sell wine the collector has held for at least eight years;
- Describe the requirements for and the method by which applicants can be certified as small wineries and renew prior certifications; and
- Outline the process for the creation of small winery cooperative wholesalers and the requirements for their operation and permit renewals.

Plain language analysis

This proposed rule does the following:

- Provides the requirements for registration of wine collectors, the sale of wine held by the collector to other wine collectors and notice to the department in advance of any sale.
- Details the procedure for the creation and organization of small winery cooperative wholesalers. Listing the application process, and requirements for the members of the cooperative.
- Creates a provision specifying that the department may approve cooperative wholesaler applications to provide greater public convenience and service to all areas of Wisconsin.
- Details the activities authorized for small winery cooperative wholesalers.

Comparison with federal regulations

The Federal Alcohol Administration Act, Title 27 Chapter 8 of the United States Code, provides for regulation of those engaged in the alcohol beverage industry. The proposed rule does not conflict with, overlap, or duplicate other rules or federal regulations.

Comparison with rules in adjacent states

Illinois – No similar rule exists.

Iowa – No similar rule exists.

Michigan – No similar rule exists.

Minnesota – No similar rule exists.

Summary of factual data and analytical methodologies

2007 Wisconsin Act 85 created s. 125.03 (1) (b), which established the registration of wine collectors and the requirements for the sale of wine by a wine collector, and s. 125.545 Stats., which defines small wineries and establishes the standards for the creation of a small winery cooperative wholesaler. The principal purpose of cooperative wholesalers is to sell and distribute wine manufactured by small wineries. Within the provisions of s. 125.03 (1) (b), Stats., is a requirement that the department promulgate rules to:

- Provide for the registration of wine collectors.
- Establish the standards of eligibility for registration as a wine collector.
- Specify the form and manner of notice required before the sale of wine by a wine collector.

Within the provisions of s. 125.545 (6) (b), Stats., is a requirement that the department shall promulgate rules to administer and enforce the requirements relating to small winery cooperative wholesalers.

In consultation with wineries, the Wisconsin federation of cooperatives, the University of Wisconsin center for cooperatives, and the liquor wholesaler industry, the department has created this proposed rule order to satisfy the above requirements.

Analysis and supporting documents used to determine effect on small business

This proposed rule is created in accordance with SECTION 50 of 2007 Wisconsin Act 85 and ss. 125.03 (1) (b) and 125.545 (6) (b), Stats., to administer and enforce statutory requirements pertaining to wine collectors and small winery cooperative wholesalers. As the rule does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

Anticipated Costs Incurred by Private Sector

This proposed rule does not have a significant fiscal effect on the private sector.

Effect on Small Business

This proposed rule does not have a significant effect on small business.

Small business contact person

Julie Raes
Department of Revenue
Mail Stop 6–73
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708–8933
Telephone (608) 267–9892
E–mail julie.raes@revenue.wi.gov

Fiscal Estimate

2007 Wisconsin Act 85 established requirements for the registration of wine collectors and for the sale of wine by a wine collector. In addition, Act 85 also defined small wineries and created standards for the formation of a small winery cooperative wholesaler to distribute wine manufactured by small wineries.

As authorized by Act 85, the proposed rule, under s. 125.03 (1) (b) Stats., provides for the registration of wine collectors, establishes the standards of eligibility for the registration, and specifies the form of notice required for the sale of wine by a wine collector. In addition, under s. 125.545 Stats., the proposed rule establishes a framework to administer and enforce the requirements relating to small winery cooperative wholesalers.

While the Department of Revenue anticipates that the costs to administer the entirety of Act 85 to be \$96,800 on an annualized basis, this proposed rule, which establishes requirements only for the portions of the act described above, does not have any significant fiscal effect.

Submission of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than September 5, 2008, and will be given the same consideration as testimony presented at the hearing.

Agency Contact Person

Dale Kleven
Department of Revenue
Mail Stop 6–40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708–8253
Telephone (608) 267–9892
E–mail dale.kleven@revenue.wi.gov

Copy of Proposed Rule

A copy of the full text of the proposed rule order may be obtained at no cost by contacting the department. See the Agency Contact Person listed above for questions concerning this proposed rule order.

Submittal of Proposed Rules to the Legislature

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

Agriculture, Trade and Consumer Protection

CR 07–116

A rule–making order revising Chapters ATCP 42, 55 and 57, relating to meat and inedible animal by–products.

Commerce

Fee Schedule, Ch. Comm 2

Licenses, Certifications and Registrations, Ch. Comm 5

CR 08–039

Revises Chapters Comm 2 and 5, relating to program revenue fees.

Commerce

Elevators, Escalators and Lift Devices, Ch. Comm 18

CR 08–030

Revises Chapters Comm 5, 18 and 21, relating to the conveyance safety code.

Commerce

Boilers and Pressure Vessels, Ch. Comm 41

Mechanical Refrigeration, Ch. Comm 45

CR 08–028

Revises Chapters Comm 41 and 45, relating to boilers and pressure vessels and mechanical refrigeration.

Health Services

(Formerly Health and Family Services)

Community Services, Chs. HFS 30–

Medical Assistance, Chs. HFS 100–

CR 06–080

Revises Chapters HFS 35, 61, 105 and 107, relating to outpatient mental health clinics.

Public Instruction

CR 08–018

Creates Chapter PI 16, relating to four–year–old kindergarten grants.

Regulation and Licensing

CR 08–040

Revises section RL 16.06 (1), relating to the use of approved forms for the practice of real estate.

Transportation

CR 08–048

Revises section Trans 250.04, relating to internet and telephone call–in fees.

Veterinary Examining Board

CR 07–051

Revises sections VE 1.02, 7.01, 7.06 and 10.03, relating to continuing education, informed consent and recordkeeping.

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.

Children and Families

(Formerly Department of Workforce Development)

Family Supports, Chs. DWD 12–59

CR 08–020

A rule–making order to revise section DWD 56.08, relating to child care copayments and affecting small businesses. Effective 9–1–08.

Podiatrists Affiliated Credentialing Board

CR 07–103

Creates section Pod 3.02 (1) (e), relating to continuing medical educational programs. Effective 10–1–08.