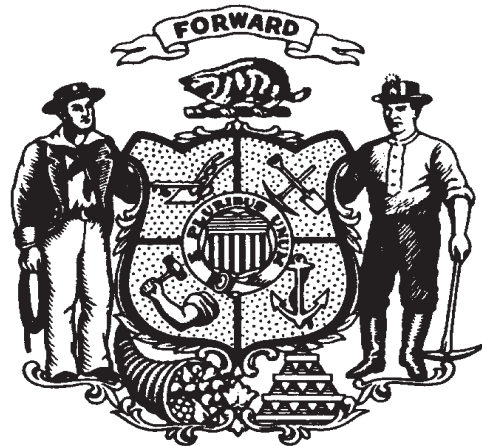


Wisconsin Administrative Register

No. 636



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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.

Children and Families

(Formerly Workforce Development)

Family Supports, Chs. DWD 12 to 59

EmR0821 — Rules adopted creating **ss. DWD 40.02 (12m), 40.05, and DWD 40 Appendix D** (renumbered DCF 150.02 (12m), 150.05 and DCF 150 Appendix D, effective 12-1-08), 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: June 27, 2008 through November 23, 2008

Hearing Date: July 29, 2008

Extension Through: December 31, 2008

Commerce

Fee Schedule, Ch. Comm 2

EmR0837 — Rule adopted revising **s. Comm 2.68**, relating to public swimming pool and water attraction plan review and inspection fees.

Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. Implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets.

2. The Virginia Graeme Baker Pool and Spa Safety Act has a compliance date of December 19, 2008.

3. The department estimates that 3,700 existing pools and water attractions will need to be modified in order to comply with the federal act.

4. The current department plan review fees and inspection fees under s. Comm 2.68 reflect an estimated average time and cost to provide those services. For the types of pool and water attraction modifications necessary to comply with the Virginia Graeme Baker Pool and Spa Safety Act, the department believes that the time and cost to provide the service will be below the averages reflected under the current fee structure of section Comm 2.68.

5. The department believes that a temporary fee reduction to facilitate plan review and inspection relative to the Virginia Graeme Baker Pool and Spa Safety Act is in alignment with the direction provided under s. 101.19, Stats., of keeping fees consistent with the costs of providing service.

Publication Date: December 15, 2008

Effective: December 15, 2008 through May 13, 2009

Hearing Date: January 8, 2009

Commerce

Uniform Dwelling, Chs. Comm 20–25

Wisconsin Commercial Building Code, Chs. Comm 60–66

EmR0826 — Rules adopted to renumber s. **Comm 66.0911**; to amend s. **Comm 20.24 (1) and (2)**; and to create ss. **Comm 21.095, 20.24 Table 20.24–14, 62.1200, 62.3500 (3) (e), 66.0911 (title) and (2)**, relating to carbon monoxide alarms and affecting small business.

Exemption From Finding of Emergency

Under the nonstatutory provisions of 2007 Wisconsin Act 205, the Department of Commerce is 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, neither the department of commerce or the department of health services is 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 installation and maintenance of carbon monoxide alarms in buildings accommodating certain types of residential occupancies and within which fuel burning appliances are located. Residential occupancies include tourist rooming houses, bed and breakfast establishments, and any public building that is used for sleeping or lodging, such as, hotels, motels, condominiums, apartment buildings, dormitories, fraternities, sororities, convents, seminaries, community based residential facilities, home shelters, but not hospitals and nursing homes. The Act requires the installation of carbon monoxide alarms in new buildings as of October 1, 2008. The owners of existing buildings will have until April 1, 2010 to install the carbon monoxide alarms. The Act also provides for the omission of carbon monoxide alarms in certain instances which are further clarified by the administrative rules.

Publication Date: September 10, 2008
Effective: October 1, 2008 through February 27, 2009
Hearing Date: October 14, 2008

Commerce (2)

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

1. **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: July 16, 2008 through December 12, 2008
Hearing Date: August 27, 2008
Extension Through: February 10, 2009

2. **EmR0831** — Rules adopted creating section **Comm 113.03 (4)**, relating to allocation of volume cap on tax-exempt private activity bonds.

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. Because of widespread disruption of the housing markets, Congress has enacted the Housing and Economic Recovery Act of 2008 (the “Act”), which contains various relief measures relating to housing. Section 3021 of the Act creates a special one-time additional allocation of volume cap for calendar year 2008, to be used for the issuance of single-family housing bonds and multifamily housing bonds no later than December 31, 2010.

Under section 560.032 of the Statutes, the Department of Commerce is charged with allocating to Wisconsin issuers the private activity bond volume cap allocated to Wisconsin under the Internal Revenue Code of 1986, 26 USC 146. This emergency rule is necessary to implement the special allocation of volume cap under the Act, as described above.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Publication Date: September 27, 2008
Effective: September 27, 2008 through February 23, 2009
Hearing Date: October 27, 2008

Corrections

EmR0835 — Rules adopted creating **s. DOC 332.20**, relating to establishing a reimbursement fee to offset the costs of monitoring persons subject to global positioning system tracking or passive positioning system tracking.

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:

Under 2005 WI Act 431, section 8, the legislature requires certain persons who have been convicted of a serious child sex offense, who have been found not guilty of a serious child sex offense by reason of mental disease or mental defect, or who are the subject of notification under s. 301.46 (2m) (am), Stats., to be placed on lifetime tracking under a global positioning system (GPS) or a passive positioning system (PPS). The legislature also authorized the department to establish a rule to require persons who are subject to GPS tracking or PPS tracking to pay the cost of tracking.

If the rule is not created promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of the tracking program, which could result in a lessening of tracking due to budget limitations.

The purpose of the emergency rule is to require all persons who are subject to tracking to pay the tracking fee which is used to offset the costs of the tracking program. 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 tracking fees while permanent rules are being developed.

Publication Date: November 12, 2008
Effective: November 12, 2008
 through April 10, 2009
Hearing Date: December 11, 2008

Financial Institutions — Securities

EmR0829 — Rules adopted to **amend s. DFI–Sec 4.06 (2) (i) and to create ss. DFI–Sec 4.06 (1) (v), 5.06 (14) and Chapter DFI–Sec 10**, relating to making it a dishonest or unethical practice for securities licensees to make use of misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

Finding of Emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

The Division is taking immediate, emergency–rule action to protect seniors in Wisconsin from being misled through the use by securities licensees of designations and credentials that imply or represent that a person has special expertise, certification, or training in financial planning for seniors, but where such designations and/or credentials are either non–existent or do not involve significant education, testing, training or experience, and in reality are marketing ploys.

Publication Date: September 15, 2008
Effective: September 15, 2008
 through February 11, 2009

Government Accountability Board

EmR0830 — Rules adopted repealing and recreating **Chapter GAB 4**, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

Finding of Emergency

Pursuant to section 227.24, Stats., the Government Accountability Board finds that an emergency exists in the Board's May 5, 2008 decision to decline to reaffirm the administrative rule section EIBd 4.01 because the rule was inconsistent with the requirements of its enabling statute, s. 7.41, Stats. The statute states that any member of the public is allowed to be present at the polls on Election Day to observe; however, it does not specify standards of conduct they must abide by.

The Board further finds that given the intense interest in the fall election, the expected high turnout, the increasing use of observers in the polling place, and the comments of municipal and county clerks regarding the obstacles observers can pose to the orderly conduct of elections, it is necessary to codify standards to regulate the observers' conduct and that the attached rule governing observer conduct must be adopted prior to the fall elections to ensure the public peace and safety with respect to the administration of the fall elections.

Publication Date: September 26, 2008
Effective: September 26, 2008
 through February 22, 2009
Hearing Date: November 11, 2008

Health Services (2)

(Formerly Health and Family Services)

*Management & Technology & Strategic Finance,
 Chs. HFS (DHS) 1—*

- EmR0832** — Rule adopted to repeal **s. HFS (DHS) 12.03 (15) and to create ss. HFS (DHS) 12.03 (20m), 12.115 and Table HFS (DHS) 12.115**, relating to background checks of individuals who provide personal care services, and affecting small businesses.

Finding of Emergency

The Department of Health 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 172 requires the department to specify by rule, the crimes, a conviction of which an entity must disclose to a client or a client's guardian before the caregiver provides the client with personal care services in the client's home. Act 172 also requires the department to define the term "substitute caregiver". Under s. 50.065 (2m) (d), Stats., as created by 2007 Wisconsin Act 172, the department created a list of crimes required and also as required defined the term "substitute caregiver".

Effective November 1, 2008, entities, including home health agencies and temporary employment agencies, are required under s. 50.065 (2m) (d), Stats., to disclose to the client or the client's guardian, the assigned caregiver's convictions of crimes specified by the department by rule.

Publication Date: October 20, 2008
Effective: November 1, 2008 through March 31, 2009
Hearing Date: January 6, 2009

Publication Date: August 29, 2008
Effective: September 1, 2008 through January 28, 2009
Hearing Date: December 11, 2008

2. **EmR0834** — Rules adopted amending s. HFS (DHS) 10.23 (2) (d) 2., relating to confidentiality requirements of the Family Care program that prohibit benefit specialists from disclosing personally identifying information about a client without the client's informed consent, unless required by law.

Finding of Emergency

The Department of Health Services finds that an emergency exists and that 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:

Chapter HFS 10 is the department's rule that guides the implementation of the department's Family Care program. Included in these provisions are standards for confidentiality which prohibit disability benefit specialists from disclosing personally identifying information about a client without the client's consent unless required by law. Because disability benefit specialists are permissive reporters, and thus not required to report abuse, neglect, or financial exploitation of elder adults and adults at risk under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., s. HFS 10.23 (2) (d) 2., effectively prevents disability benefits specialists from making such disclosures.

Amending s. HFS 10.23 (2) (d) 2., to allow disability benefit specialists to report abuse, neglect, or financial exploitation under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., would help to ensure that elder adults and adults-at-risk who may have been abused, neglected, or financially exploited are brought to the attention of the abuse, neglect and exploitation response systems outlined under ss. 46.90 and 55.043, Stats.

Publication Date: November 3, 2008
Effective: November 3, 2008 through April 1, 2009

Health Services

(Formerly Health and Family Services)

Health, Chs. HFS 110—

EmR0825 — Rule adopted creating Chapter HFS 119, to require emergency medical technicians, first responders, and individuals who provide instruction to emergency medical technicians and first responders to complete training on the use of automated external defibrillators and to specify the content of the training, qualifications of providers, and frequency with which training is to be completed, and affecting small businesses.

Exemption From Finding of Emergency

The legislature by 2007 Act 104 provides the department with an exemption from a finding of emergency to adopt these emergency rules.

Military Affairs — Wisconsin Emergency Management

EmR0836 — Rule adopted revising Chapter WEM 1, relating to fee revisions to facilities housing hazardous chemicals, hazardous substances, and extremely hazardous substances as defined in s. WEM 1.02 (5).

Finding of Emergency

The Wisconsin Division of Emergency Management (WEM)/State Emergency Response Commission finds that an emergency exists and that a rule revision is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting an emergency is as follows:

Emergency response to and planning for accidental or purposeful releases of dangerous chemicals will be compromised by a significant reduction of money available to fund emergency management activities at the county level. County emergency management agencies will be unable to fully comply with state and federal laws. Wisconsin Emergency Management would also experience substantial reductions in capabilities to assist local units of government with their state and federally required responsibilities. Sufficient funding of the county grant program and WEM activities is necessary to protect and defend the citizens of Wisconsin from accidental releases and releases caused by terrorist actions.

Publication Date: December 1, 2008
Effective: December 1, 2008 through April 29, 2009
Hearing Dates: December 18 and 19, 2008

Natural Resources

Fish, Game, etc., Chs. NR 1—

EmR0824 — Rule adopted revising ss. NR 10.01 (1) (b), (g), (h), (u) and (v) and 10.06 (5), relating to the 2008 migratory game bird seasons and waterfowl hunting zones.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid-August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: August 30, 2008
Amendment: September 26, 2008
Effective: August 30, 2008 through
 January 26, 2009
Hearing Date: October 27, 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: July 1, 2008 through
 November 27, 2008
Hearing Dates: July 22 to August 5, 2008
Extension Through: January 26, 2009

Public Instruction

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: May 17, 2008 through
 October 13, 2008
Hearing Date: July 23, 2008
Extension Through: January 31, 2009

Regulation and Licensing (3)

- 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: June 18, 2008 through
 November 14, 2008
Hearing Date: November 11, 2008
Extension Through: January 14, 2009

- EmR0827** — Rule adopted creating s. RL 91.01 (3) (k), relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective: September 10, 2008
 through February 6, 2009
Hearing Date: November 26, 2008

- EmR0828** — Rules adopted to amend s. RL 181.01 (2) (c); and to create ss. RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2., relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective: September 10, 2008
 through February 6, 2009
Hearing Date: November 26, 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: June 26, 2008 through
 July 1, 2010 or the date on
 which permanent rules
 take effect, whichever is
 sooner.

Transportation

EmR0833 — Rule adopted revising Chs. Trans 325, 326

and 327, relating to motor carrier safety, and hazardous material transportation safety.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety or welfare. Recently enacted commercial motor carrier safety regulations apply to drivers and carriers transporting property and passengers by commercial vehicles in interstate commerce and enhance highway safety. It is imperative the industry operates under a single set of safety regulations to minimize confusion that could result in inadvertent noncompliance or application of an outdated safety standard. Also pursuant to 49 CFR 350.331(d), States are required to adopt compatible laws or rules to remain eligible for Motor Carrier Safety Assistance Program funding. Currently, Wisconsin receives approximately \$4 million in such funding, which is used to administer various highway safety programs, and that funding and the safety programs it supports will be in jeopardy if Wisconsin does not implement these changes immediately. The Motor Carriers Association has urged the Department to implement these changes as it will help ensure uniformity and increased highway safety.

Publication Date: November 5, 2008
Effective: November 5, 2008 through
 April 3, 2009
Hearing Date: December 2, 2008

Scope Statements

Cemetery Board

Subject

Creates Chapters CB 3, 4, and 5, to reflect the newly created statutory requirements for the transfer of regulatory authority of cemeteries from the Department of Regulation and Licensing to the Cemetery Board and the creation of licensing requirements for cemeteries. The rules will repeal Chapters RL 52 to 54 to reflect the new statutory requirements.

Objective of the Rule

To implement the statutory provisions of 2007 Wisconsin Act 174.

Policy Analysis

The creation of administrative rules for the licensing and regulation of cemeteries is necessary to implement newly created portions of chs. 157 and 440 of the Wisconsin statutes pursuant to 2005 Wisconsin Act 25 and 2007 Wisconsin Act 174. The regulation of cemeteries was previously under the authority of the Department of Regulation and Licensing. New licensure requirements have also been created for cemeteries.

Statutory Authority

Section 15.08 (5) (b), Stats., and chs. 157 and 440, Stats., as amended by 2005 Wisconsin Act 25 and 2007 Wisconsin Act 147.

Comparison with Federal Regulations

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Entities Affected by the Rule

Cemetery licensees and applicants.

Estimate of Time Needed to Develop the Rule

25 hours.

Children and Families

Family and Economic Security, Chs. DCF 101—

Subject

Revises Chapter DCF 150, relating to medical support and child support guidelines review.

Policy Analysis

The proposed rules will adopt provisions of a new federal regulation on medical support in child support cases and recommendations of the Department's child support guidelines review.

Medical Support

Under s. 767.513, Stats., the court shall specifically assign responsibility for and direct the manner of payment for the child's health expenses in addition to ordering child support for a child. The court must consider the availability of health insurance to each parent, the extent of coverage available to a child, and the cost to the parent for the coverage.

Under the proposed rules, the court may order a parent to enroll a child in health insurance that is comprehensive, accessible to the child, and available at a reasonable cost to either or both parents.

- A health insurance plan will be considered *comprehensive* if it would cover hospitalization and other medical costs without large out-of-pocket deductibles or co-payments.
- A health plan will be considered *accessible* if the plan's service providers are located within a reasonable distance from the child's home. In general, service providers will be considered within a reasonable distance if they are located within 30 minutes or 30 miles of the child's residence, with a greater distance allowed in some rural areas.
- The court may order either or both parents to pay for or contribute to the cost of health insurance. Each parent's payment for or contribution to the cost of health insurance will be considered *reasonable* if it does not exceed 5% of the parent's monthly income available for child support. In applying the 5% standard, the cost of the health insurance is the cost to add the child or children to existing coverage or the difference between the cost of self-only coverage and the cost to that parent after adding the child or children.

The court may incorporate responsibility for a contribution to the cost of health insurance as an upward or downward adjustment to a payer's child support obligation. If there is no health insurance plan available that is comprehensive, accessible to the child, and available at a cost that does not exceed 5% of the parents' combined income, the court may order that either parent enroll the child in such a plan if one becomes available to the parent in the future.

The court may not order a low-income parent to enroll a child in a health insurance plan or contribute to the cost of health insurance unless the health insurance is available to the parent at no cost. "Low-income parent" will be defined as a parent who has a monthly income available for child support that is below 150% of the federal poverty guidelines.

The court may also establish an order for medical expenses that are not covered by insurance. The court must consider each parent's ability to pay these medical expenses.

Guidelines Review

45 CFR 302.56(e) requires states to review, and revise, if appropriate, the state's child support guidelines at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts. The Department submitted the latest review of the Wisconsin child support guidelines to the federal Office of Child Support Enforcement in January 2008. This review included the following 3 recommendations for changes to the child support guidelines in DCF 150:

- Extend the application of the special provision for low-income payers in s. DCF 150.04 (4) and Appendix C from up to 125% of the federal poverty guidelines to up to 150% of the federal poverty guidelines. The current rule provides a schedule with reduced percentage rates to be used to determine the child support obligation for payers with an income below approximately 125% of the federal

poverty guidelines if the court determines that the payer's total economic circumstances limit his or her ability to pay support at the level determined using the full percentage rates. For income between approximately 75% and 125% of the federal poverty guidelines, the percentage rates gradually increase as income increases. The proposed rule will extend use of the reduced percentages to payers with an income up to 150% of the federal poverty guidelines.

- Provide that if a payer could be eligible for the special provision on calculating support for a high-income payer in s. DCF 150.04 (5) and the special provision on calculating support for shared-placement parents in s. DCF 150.04 (2), the child support obligation is the lower amount calculated under either formula. The current rule already limits a shared-placement payer who is also a low-income payer to the lower amount calculated under either formula.
- Change the term "serial-family payer" to "serial-family parent" to conform the rule to the intent for serial family cases with a previous shared-placement obligation. The concept behind the special provision for shared-placement parents is that the order is smaller than a full percentage order because the parent has significant placement and is covering the child's basic support expenses while with that parent. The concept behind the special provision for serial families is to give credit for the amount spent on the first family before determining the order for children in the next family. The current serial family provision refers to the "payer" in a shared-placement order in giving credit for the amount spent on the earlier children. The Department proposes to change "payer" to "parent" so a parent who did not owe child support under the shared-placement provision will still be entitled to credit for pre-existing obligations in the determination of support under the serial family provision.

Statutory Authority

Sections 49.22 (9), 767.513, and 227.11 (2), Stats.

Comparison with Federal Regulations

Background on Medical Support

The first federal requirement that medical support be addressed in child support cases was in the Child Support Amendments of 1984. States were required to petition for medical child support in cases enforced under Section IV-D of the Social Security Act (IV-D cases) if health care coverage was available to the noncustodial parent at a reasonable cost. Reasonable cost was defined as coverage available through the noncustodial parent's employment. The IV-D cases included custodial parents receiving AFDC or Medicaid and non-AFDC cases with the custodial parent's consent.

In 1989, a change to 45 CFR 302.56 required states to establish one set of guidelines for setting and modifying child support award amounts within the state with a rebuttable presumption that the guidelines would apply in all child support cases. Among other things, the regulation required that the guidelines must, at a minimum, provide for the child's health care needs through health insurance coverage or other means. It did not specify how health care needs should be addressed.

The Child Support Performance and Incentive Act of 1998 required health care coverage in IV-D cases, while previous law merely required States to petition for inclusion of health

care coverage. This Act also directed the Secretaries of the Department of Labor and the Department of Health and Human Services to establish a Medical Child Support Working Group to identify impediments to the effective enforcement of medical support and to make recommendations to eliminate them. The Working Group released their report, *21 Million Children's Health: Our Shared Responsibility*, in August 2000. The report is available at <http://www.acf.hhs.gov/programs/cse/pubs/2000/reports/medrpt/>.

New Medical Support Provisions

Several of the key recommendations of the Working Group were adopted in the Deficit Reduction Act of 2005 and new medical support regulations issued on July 21, 2008. (*Child Support Enforcement Program; Medical Support; Final Regulation*, 73 Federal Register 42416). As amended, 42 USC 666(a)(19) provides that all IV-D child support orders shall include a provision for medical support for the child to be provided by either or both parents. State IV-D agencies now have the option of enforcing medical support against a custodial parent if health care coverage is available to the custodial parent at a reasonable cost.

The new regulation on securing and enforcing medical support obligations at 45 CFR 303.31 is more specific than the previous medical support section. It provides that the State IV-D agency must petition the court to include private health insurance that is accessible to the child, as defined by the State, and is available to the parent responsible for providing medical support at a reasonable cost in new or modified court orders for support.

If private health insurance is not available at the time the order is entered or modified, the State must petition to include cash medical support in new or modified orders until health insurance that is accessible and reasonable in cost becomes available. In appropriate cases, as defined by the State, cash medical support may be sought in addition to health insurance coverage.

Cash medical support or the cost of private health insurance is considered "reasonable in cost" if the cost to the parent responsible for providing medical support does not exceed 5% of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in the state child support guidelines. In applying the 5% or alternative state standard for the cost of private health insurance, the cost is the cost of adding the child or children to the existing coverage or the difference between self-only and family coverage.

"Health insurance" includes fee for service, health maintenance organization, preferred provider organization, and other types of coverage that is available to either parent, under which medical services could be provided to a dependent child.

"Cash medical support" means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance.

On pages 42423-42424 of the preamble to the rule, commenters requested clarification on including unfixed, unreimbursed medical expenses in the definition of cash medical support subject to the reasonable cost limitations because this would unfairly place the burden for these costs on the custodial parent. The Administration for Children and Families responded that they agree it would not be appropriate at the time an order is established to include the cost of future, uncertain, and unspecified medical costs when applying the

5% cost–reasonableness standard. They further state that they do not agree that responsibility for extraordinary medical costs set in a subsequent medical support order should be ordered without any consideration of the obligated parent’s ability to pay at the time the cost is incurred or reimbursement is sought.

New Medical Support Provision Affects All Child Support Awards

The new medical support regulations will affect all child support awards, not just IV–D cases. The amended 45 CFR 302.56 requires that state guidelines for setting and modifying all child support amounts within the state address how the parents will provide for a child’s health care needs through health insurance coverage or cash medical support, or both, in accordance with 45 CFR 303.31, the new medical support regulation.

Guidelines Review

In addition to the new medical support rule, the existing 45 CFR 302.56(e) requires states to review, and revise, if appropriate, the state’s child support guidelines at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

Entities Affected by the Rule

County child support agencies, judges, court commissioners, attorneys, parents, and children

Estimate of Time Needed to Develop the Rule

400 hours.

Contact Information

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Corrections

Subject

Amends Chapter DOC 302, relating to assessment and evaluation, security classification, sentence computation, and special action releases.

Objective of the Rule

The objective of the rule is to amend the chapter to reflect a number of changes in the law, including truth in sentencing and case law addressing sentence computation, and changes in the operations and practices of assessing and evaluating inmates upon admission to the prison system, determining the security classification and custody level of inmates, making sentence computations, and special action releases.

Policy Analysis

The current rule chapter provides in detail the procedures for initial assessment and evaluation of inmates as they are received into the prison system. This process identifies security classification, custody level, program or treatment assignments, and institution placement. The chapter also sets forth the procedures followed in computing sentences which information is used in determining eligibility for parole and release dates. The chapter also provides for procedures to address special action releases. The rule chapter has not been fully reviewed for revision since passage of Wisconsin’s Truth in Sentencing law in 1998. There have been further statutory amendments and case law developments which have

resulted in the need to modify this administrative code chapter.

There is no alternative means to address the need for revisions other than to review the chapter for purposes of amendment.

Statutory Authority

Sections 227.11 (2), 301.02, and 301.03 (2), Stats.

Comparison with Federal Regulations

There are no federal regulations which address the assessment and evaluation, security classification, custody level determination, or sentence computation of persons sentenced to Wisconsin prisons for violations of Wisconsin criminal statutes. However, under 4 USCA § 112, Congress has authorized the Interstate Corrections Compact which Wisconsin adopted and is found in § 302.25, Wis. Stats. The ICC permits participating states to cooperate among themselves in the supervision of inmates and offenders.

Entities Affected by the Rule

This rule affects persons who are committed to adult correctional institutions and department staff.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 400 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Contact Information

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Corrections

Subject

Creates s. DOC 302.33, relating to department’s review of petitions to the sentencing court for modification of bifurcated sentences of inmates who are over a certain age and have served a portion of their bifurcated sentences or who are terminally ill.

Objective of the Rule

The objective of the rule is to create s. DOC 302.33, to establish procedures for the department to exercise its authority under s. 302.113 (9g), Stats., to review petitions of certain inmates for modification of their bifurcated sentences. Under this statutory section, an inmate who is serving a bifurcated sentence for a crime other than a Class B felony may seek modification of the bifurcated sentence if the inmate meets one of three criteria. Specifically, those three criteria are: (1) the inmate is 65 years of age or older and has served at least 5 years of the term of confinement in the prison portion of the bifurcated sentence; (2) the inmate is 60 years of age or older and has served at least 10 years of the term of confinement in the prison portion of the bifurcated sentence; and (3) the inmate has a terminal condition. Under the statutory scheme, the department is required to review the petition to determine whether the public interest would be served by the requested modification of the inmate’s bifurcated sentence. If the department determines the public interest would be served by the requested modification of the inmate’s bifurcated sentence, the department must then refer the inmate’s petition to the sentencing court for further action. An inmate who files a petition under s. 302.113 (9g), Stats., is entitled to representation.

Policy Analysis

In order to act under this statutory provision the department must promulgate rules to establish the procedures for receiving and acting on petitions filed by inmates. There are no alternative means to address the need for the rule.

Statutory Authority

Sections 227.11(2), 301.02, 301.03 (2), and 302.113 (10), Stats.

Comparison with Federal Regulations

There are no federal regulations which address releases under s. 302.113 (9g), Stats.

Entities Affected by the Rule

This rule affects inmates who wish to petition the sentencing court for a modification of their bifurcated sentences under s. 302.113 (9g), Stats., sentencing courts, prosecutors, victims, and department staff.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 100 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Contact Information

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Corrections**Subject**

Amends Chapter DOC 308, relating to administrative confinement.

Objective of the Rule

The objective of the rule is to amend the rule to reflect changes in the operations and practices of the department in placing inmates in administrative confinement status.

Policy Analysis

The current rule establishes a procedure for placing inmates in administrative confinement which is an involuntary nonpunitive status. The procedure includes the steps for placement in the status and periodic review and appeal. This proposed rule would make the process for placing inmates in administrative confinement more efficient but retain a review and appeal process.

Statutory Authority

Sections 227.11 (2), 301.02, and 301.03, Stats.

Comparison with Federal Regulations

There are no federal regulations which address administrative confinement of persons sentenced to Wisconsin prisons for violations of Wisconsin criminal statutes. However, under 4 USCA § 112, Congress has authorized the Interstate Corrections Compact which Wisconsin adopted and is found in s. 302.25, Wis. Stats. The ICC permits participating states to cooperate among themselves in the supervision of inmates and offenders.

Entities Affected by the Rule

The Department expects that the proposed rule will affect its staff and inmates housed in prisons under s. 302.01, Stats.

Estimate of Time Needed to Develop the Rule

It is anticipated that 400 hours of staff time may be necessary to review and revise the administrative rule, including drafting, cost estimates, public hearings and complying with rule making requirements.

Contact Information

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Corrections**Subject**

Amends s. DOC 309.20 (4) (c) , relating to authorizing the department to use a deceased inmate's funds to offset financial obligations owed to the department at the time of death, including medical co-pay, burial costs and legal loans.

Objective of the Rule

The objective of the rule is to permit the department to use inmate funds which are maintained by the department to offset financial obligations incurred by the inmate while incarcerated. These financial obligations include but are not limited to legal loans, medical co-pay, and burial costs. With regard to burial costs, the department incurs these costs when no family member or other person comes forward to pay for the burial of an inmate who dies in prison. Under the proposal if there were additional funds available after using them to offset the financial obligations incurred during incarceration, the department would distribute those funds to the inmate's next of kin as already provided in the current rule.

Policy Analysis

Under the current rule, when an inmate dies in prison, the department disposes of inmate funds which are greater than \$150.00 but less than \$10,000.00 by distributing them to the inmate's next of kin in accordance with s. 867.03, Stats. There is no provision in the current rule for the department to offset those funds against financial obligations which the inmate incurs over the term of incarceration. This proposal would permit the department to use the deceased inmate's funds to offset those obligations, including medical co-pay, legal loans, and burial costs.

There are no alternative means to address the need for the rule.

Statutory Authority

Sections 227.11 (2), 301.02, and 301.03 (2), Stats.

Comparison with Federal Regulations

There are no federal regulations which address the issue of the department of using a deceased inmate's funds to offset financial obligations incurred by the inmate during the period of incarceration.

Entities Affected by the Rule

This rule affects the families of deceased inmates whose inmate account funds will be used by the department to offset financial obligations incurred during the period of incarceration.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 50 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Contact Information

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Corrections**Subject**

Amends Chapter DOC 310, relating to inmate complaint procedures.

Objective of the Rule

The objective of the rule is to review the entire chapter for amendment to reflect changes in the law and changes in the operations and practices of the department as they affect the inmate complaint procedures.

Policy Analysis

The current rule establishes a procedure for inmates to file complaints regarding living conditions, staff actions affecting institution environment, and civil rights. The procedure provides for a review process which includes investigation, resolution, and appeal if the inmate is not satisfied with the institution response.

This proposed rule would make necessary changes in light of current case law, as well as changes upon evaluation of the rule's current effectiveness and efficiency.

Statutory Authority

Sections 227.11 (2), 301.02, and 301.03, Stats.

Comparison with Federal Regulations

There are no federal regulations which address the complaint process which is provided to persons sentenced to Wisconsin prisons for violations of Wisconsin criminal statutes. However, under 4 USCA § 112, Congress has authorized the Interstate Corrections Compact which Wisconsin adopted and is found in s. 302.25, Wis. Stats. The ICC permits participating states to cooperate among themselves in the supervision of inmates and offenders.

Entities Affected by the Rule

The Department expects that the proposed rule will affect its staff and inmates housed in prisons under s. 302.01, Statutes.

Estimate of Time Needed to Develop the Rule

It is anticipated that 400 hours of staff time may be necessary to review and revise the administrative rule, including drafting, cost estimates, public hearings and complying with rule making requirements.

Contact Information

Kathryn R. Anderson, Chief Legal Counsel, Department of Corrections, 3099 East Washington Avenue, P.O. Box 7925, Madison, WI 73707-7925, Phone: (608) 240-5049, FAX: (608) 240-3306, kathryn.anderson@wisconsin.gov

Corrections**Subject**

Amends Chapter DOC 313, relating to prison industries.

Objective of the Rule

The objective of the rule is to review the entire chapter for amendment to reflect changes in the operations and practices of the department as they affect inmate workers in prison industries jobs.

Policy Analysis

The current rule establishes the department's prison industries program. The current rule does not reflect accurately the procedures and practices involved in the operations of a prison industry. For example, the current rule requires approval by the program review committee prior to hiring an inmate. Also, there have been some changes in verbiage over time. For example, the current rule interchangeably uses the term inmate and employee. Inmates are not employees in the traditional sense of the word. The prison industries program is foremost a correctional program. The department is not an employer of inmates. There is a need to amend the rule to reflect current approaches to the use of inmates in this program. For example, section DOC 313.10 does not provide for the termination of an inmate's participation in the prison industries program, except for enumerated reasons. However, there are penological reasons for removing an inmate from a particular job or location. The rule needs to be amended to clarify this inherent authority of the department to maintain the safety and security of its prisons.

Statutory Authority

Sections 227.11 (2), 301.02, 301.03, and 303.015 (1) (c), Stats.

Comparison with Federal Regulations

There are no federal regulations which address the prison industries program as it applies to persons sentenced to Wisconsin prisons for violations of Wisconsin criminal statutes. However, under 4 USCA § 112, Congress has authorized the Interstate Corrections Compact which Wisconsin adopted and is found in s. 302.25, Wis. Stats. The ICC permits participating states to cooperate among themselves in the supervision of inmates and offenders.

Entities Affected by the Rule

The Department expects that the proposed rule will affect its staff and inmates housed in prisons under s. 302.01, Statutes.

Estimate of Time Needed to Develop the Rule

It is anticipated that 300 hours of staff time may be necessary to review and revise the administrative rule, including drafting, cost estimates, public hearings and complying with rule making requirements.

Contact Information

Kathryn R. Anderson, Chief Legal Counsel, Department of Corrections, 3099 East Washington Avenue, P.O. Box 7925, Madison, WI 73707-7925, Phone: (608) 240-5049, FAX: (608) 240-3306, kathryn.anderson@wisconsin.gov

Pharmacy Examining Board**Subject**

Repeals s. Phar 4.02 (2), relating to the practical examination requirement.

Objective of the Rule

The objective of the rule is to repeal the current requirement that all applicants for licensure as a pharmacist

in Wisconsin successfully complete a practical examination administered by the Department of Regulation and Licensing.

Policy Analysis

Consultation remains important in preventing injury and death due to errors in the practice of pharmacy. The board believes that consultation competency is effectively developed in the pharmacy schools and adequately tested as part of the national qualifying examinations. Several pharmacy school curricula advancements that underscore the importance of proficiency in dealing with patients in the consultation setting have been added since the initiation of the practical examination in Wisconsin. The board further notes that the Multi-State Jurisprudence Examination (MPJE), a 90 question examination tailored to the specific laws in each state, and the North American Pharmacist Licensure Examination (NAPLEX), a scenario-based, multiple choice examination utilized by the boards of pharmacy as part of their assessment of competence to practice pharmacy, include questions relating to patient consultation.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2), 450.02 (3) (d), 450.04 and 450.05, Stats.

Comparison with Federal Regulations

Federal Medicaid law requires a patient consultation on new prescriptions.

Entities Affected by the Rule

Pharmacy Examining Board, Wisconsin Department of Regulation and Licensing, and pharmacist license applicants.

Estimate of Time Needed to Develop the Rule

100 hours.

Workforce Development *Public Works Construction Contracts,* *Chs. Comm 290–294*

Subject

Revises Chapter DWD 290, relating to the adjustment of

thresholds for application of prevailing wage rates.

Policy Analysis

When a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project, it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Sections 66.0903 (5) and 103.49 (3g), Stats., set initial estimated project cost thresholds for application of prevailing wage rates and require that DWD adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. Pursuant to s. DWD 290.15, the threshold adjustment is based on changes in the construction cost index published in the *Engineering News-Record*, a construction trade publication.

This rule will adjust the thresholds for application of the prevailing wage rate based on a 5.71% increase in the construction cost index since the thresholds were last adjusted. The current thresholds are \$45,000 for a single-trade project and \$221,000 for a multi-trade project. The new thresholds will be \$48,000 for a single-trade project and \$234,000 for a multi-trade project.

Statutory Authority

Sections 66.0903 (5), 103.49 (3g), and 227.11, Stats.

Comparison with Federal Regulations

The threshold for application of the federal prevailing wage law is a contract greater than \$2,000. This threshold is in statute and is rarely adjusted.

Entities Affected by the Rule

State agencies, local governmental units, employers in the construction industry who contract for public works projects, and employees of these employers.

Estimate of Time Needed to Develop the Rule

35 hours.

Submittal of Rules to Legislative Council Clearinghouse

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

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5

CR 08–110

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

Analysis

The proposed order revises Chapter Comm 5, relating to building contractor registration.

Agency Procedure for Promulgation

The Safety and Buildings Division is primarily responsible for promulgation of the rules. A public hearing is required and is scheduled for January 21, 2009.

Contact Information

Jim Quast
Program Manager
608–266–9292
jim.quast@wisconsin.gov

Insurance

CR 08–112

On December 15, 2008, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section Ins 3.39, Wis. Adm. Code, relating to Medicare supplement insurance products and affecting small business.

Agency Procedure for Promulgation

The date for the public hearing is January 27, 2009.

Contact Information

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

264–8101 or e-mail at julie.walsh@wisconsin.gov in the OCI Legal Unit.

Natural Resources

Environmental Protection — Solid Waste Management, Chs. NR 500—

CR 08–111

On December 12, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter NR 528, relating to the management of accumulated sediment from storm water management structures.

Agency Procedure for Promulgation

Public hearings are scheduled for February 11 and 12, 2009.

Contact Information

Jack Connelly
DNR – Bureau of Waste and Materials Management
Johnston.Connelly@wisconsin.gov

Transportation

CR 08–113

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

Analysis

The proposed order revises Chapter Trans 126, relating to the municipal or county vehicle registration fee.

Agency Procedure for Promulgation

The Division of Motor Vehicles, Bureau of Vehicle Services is responsible for promulgation of the rule. A public hearing is required and is scheduled for January 28, 2009.

Contact Information

Julie A. Johnson
Paralegal
608–267–3703

Rule-Making Notices

Notice of Hearing

Administration

CR 08-084

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1), 227.11 (2) (a), and 706.25 (4), Stats., the Department of Administration will hold public hearings on the proposed rule order to create Chapter Adm 70 relating to technical standards for electronic recording of documents in the County Register of Deeds Offices in Wisconsin.

Hearing Information

Date: January 14, 2009
Time: 1:00 P.M.
Location: St. Croix Room
 WI Department of Administration Bldg.
 101 East Wilson Street, 1st Floor
 Madison, WI 53702

Date: January 15, 2009
Time: 2:00 P.M.
Location: Northern Building, Room 200
 305 E. Walnut Street
 Green Bay, WI 54301

Date: January 21, 2009
Time: 11:00 A.M.
Location: Eau Claire County Courthouse
 721 Oxford Avenue, Room 2550/2560
 Eau Claire, WI 54703

Submission of Written Comments

Interested persons are invited to present information at the hearings. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Facts, opinions and arguments may also be submitted in writing without a personal appearance by mail addressed to: Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, WI 53707-7864 or by email to Donna.Sorenson@Wisconsin.gov. Written comments must be received by 4:30 p.m. on January 23, 2009, to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Administration

Statutes interpreted

Section 706.25, Wis. Stats.

Statutory authority

Sections 16.004 (1) and 706.25 (4), Wis. Stats.

Related statute or rule

Chapter 137, Stats.

Chapter Adm 13, Wis. Adm. Code

Plain language analysis

Pursuant to s. 706.25(4), Wis. Stats., the Department of Administration is required to promulgate by rule the standards adopted, amended or repealed by the Council under Uniform Real Property Electronic Recording Act. The proposed rule is created to provide technical standards for electronic recording of documents in the offices of the

Register of Deeds in Wisconsin. The rule does not require any entity to record electronically.

Comparison with federal regulations

There are no federal regulations proposed for electronic document recording in the local offices of the register of deeds at this time.

Comparison of similar rules in adjacent state

Though they have not adopted formal administrative rules to date, Iowa and Minnesota have adopted the URPERA and established business rules which require advance submitter agreements. Model 2 and 3 technology, PRIA standards and trusted submitter agreements are used in both Iowa and Minnesota for electronic recording of documents.

The Minnesota Legislature adopted URPERA in the spring of 2008. The Commission established under the Minnesota URPERA law will assume responsibility from the sun-setting earlier established Electronic Recording Task Force and then may well develop administrative rules for electronic recording. As of this time, no implementing rules are in place.

The Iowa Legislature passed legislation establishing an Electronic Transaction Fee in order to establish a statewide system for accepting documents electronically. The system, called the County Land Record Information System (see www.iowalandrecords.org), is owned by the Iowa County Recorders and supported by a private project manager.

Michigan and Illinois have not progressed as far as Iowa or Minnesota.

Comparison with federal regulations

There are no federal regulations proposed for electronic document recording in the local offices of the register of deeds at this time.

Summary of factual data

Surveys were conducted of most the register of deeds offices in the Midwest and phone interviews were conducted of other register/recorder/clerk's offices who are actively recording documents electronically. Laws and rules regarding electronic recording from other states were reviewed. Various experts attended council meetings and gave presentations that greatly enhanced understanding of issues and technology:

- Mark Ladd, Technology Coordinator for the Property Records Industry Association (PRIA), shared updates on guidelines of this standard-setting organization;
- Tim Reiniger of the National Notary Association explained his group's desire for increased education for notaries and implementation of electronic notarization;
- Susan Churchill of the Wisconsin Secretary of State's Office explained plans to create a database of Wisconsin notaries;
- Phil Dunshee, gave presentations on the Iowa Recorders Association's statewide portal for accessing information and recording electronic documents;
- Marc Aronson from the US Notaries organization spoke on the National Uniform Committee's work on uniform notary law and his perspective on a range of acceptable methods for notaries;

- Lisa Nelson and Luann Kohlmann of Associated Bank in Middleton explained electronic funds transactions that can be used to make payments for electronic recordings;
- Bush Nielsen, counsel for the Wisconsin Land Title Association gave an interesting presentation on the importance of the prompt and proper order of recording documents;
- Mark Saunders, deputy legal counsel and Donna Sorenson, paralegal for the Wisconsin Department of Administration, reviewed the administrative rule form, wording, process and timeline; and
- Council administrative support provided by Amy K. Moran of the Department of Administration and Jim Pahl-Washa of the Department of Revenue.

Small Business Impact

The proposed rule will provide a clear path for recording documents electronically in Wisconsin allowing for speedier processing of conveyances. The proposed rule will have no significant economic impact on a substantial number of small businesses as defined in s. 227.114 (1), Wis. Stats.

Fiscal Estimate

State fiscal effect

This rule will provide technical standards for electronic recording of documents in the local Register of Deeds Offices in Wisconsin. It requires the Wisconsin Electronic Recording Council to identify and approve "trusted submitters," which are private entities that would be approved to record documents electronically in Wisconsin. The rule does not require any entity to record electronically. Recording fees are unchanged by the rule.

Wisconsin does not have a state-level Register of Deeds and the State would not be impacted by costs to implement electronic recording. The rule does not impact the current level of administrative support provided to the Wisconsin Electronic Recording Council by state resources or staff.

As a consumer, the State records documents with local Registers and pays recording and some copying fees. If the State elects to use electronic recording in counties which allow it, there may be some increased cost from software purchases or from trusted submitter fees. Since it is currently not known how many counties will elect to implement electronic recording, the cost to the State is indeterminate.

Local fiscal effect

The rule does not require local Registers to allow electronic recording of documents. However, if the local Register of Deeds Office chooses to allow electronic recording, it would need to purchase specific software that would enable it to receive documents for recording, indexing and returning a copy of the documents once recording is completed. There are approximately 17 large to mid-sized counties that are currently accepting certain documents for electronic recording. There are several vendors of electronic recording software, but costs for the systems vary and the cost appears to depend on the level of use.

Local Registers may also experience reduced costs as a result of electronic recording; including saving on scanning, copying and mailing costs, as well as more efficient identification and correction of errors in documents.

The fiscal impact on local units of government that choose to allow electronic recording is indeterminate. In addition, the proposed rule would not require local government entities to incur any costs since participation is voluntary.

Agency Contact Person

Donna Sorenson
Department of Administration
101 E. Wilson Street
P.O. Box 7864
Madison, WI 53707-7864
(608) 266-2887
Donna.Sorenson@wisconsin.gov

Copies of Proposed Rules

The proposed rule may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. If you do not have Internet access, a copy of the proposed rule may be obtained from Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, Wisconsin 53707 or by calling (608) 266-2887.

Notice of Hearing

Commerce

Fee Schedule, Ch. Comm 2

EmR0837

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1), 101.982, 101.988 (2), and 227.24 (4) Stats., the Department of Commerce will hold a public hearing on emergency rules under Chapter Comm 2, relating to the fees for plan review and inspection of public swimming pool and water attraction modifications and affecting small business.

Hearing Information

The public hearing will be held as follows:

Date and Time:

January 8, 2009
10:00 a.m.

Location:

Conference Room 3C
Thompson Commerce Center
201 West Washington Avenue
Madison

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 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. Persons submitting comments will not receive individual responses. The hearing record on the emergency rules will remain open until January 16, 2009, 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. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

Copies of Emergency Rule

The emergency rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at

the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at roberta.ward@wisconsin.gov, or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Analysis Prepared by the Department of Commerce

Statutes interpreted

Sections 101.19 and 145.26, Stats.

Statutory authority

Sections 101.19 and 145.26, Stats.

Related statute or rule

Chapter Comm 90, Wis. Adm. Code

Explanation of agency authority

Chapters 101 and 145, Stats., grant the department general authority for the purpose of protecting public health, safety and welfare by establishing standards and regulatory oversight programs for the construction and maintenance of buildings, structures and dwellings, public swimming pools and water attractions. These programs are administered by the Safety and Buildings Division. Sections 101.19 and 145.26, Stats., grant the department authority to promulgate rules to fix and collect fees that reflect the cost of administering the public swimming pool and water attraction program.

Summary of proposed rules

The rules temporarily roll back the fees for plan review and inspection of modifications to public swimming pools and water attractions to those amounts charged prior to December 1, 2008. The temporary reduction is occurring in light of the implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act which necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets. The reduction in fees reflects the department's expected costs to review and inspect modifications.

Comparison with federal regulations

An internet-based search of the code of federal regulations and the federal register did not identify any federal requirements relating to public swimming pool and water attraction plan review or inspection fees. The federal Consumer Product Safety Commission's implementation of the Virginia Graeme Baker Pool and Spa Safety Act necessitates the modification of existing pools to address entrapment at suction outlets.

Comparison with rules in adjacent states

An Internet-based search for the states of Illinois, Iowa, Michigan and Minnesota found the following:

Illinois:

No information was found indicating that Illinois regulates public swimming pools and water attractions at the state level.

Iowa:

The reconstruction plan review fee charged by the Iowa Department of Public Health is \$250 for each swimming pool, spa or bathhouse altered in the reconstruction.

Michigan:

The permit fee established by the Michigan Department of Environmental Quality for a modification of an existing pool is \$298.

Minnesota:

The Minnesota Department of Health's plan review and inspection fee is \$400 for pool and spa alterations that do not involve alteration of the shape or size.

Summary of factual data and analytical methodologies

Implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets. The department estimates that 3,700 existing pools and water attractions will need to undergo some type of modifications. The current plan review fees reflect the estimated average time and costs to provide the service. For types of pool and attraction modifications necessary to comply with the Virginia Graeme Baker Pool and Spa Safety Act, the department believes that the time and cost to provide the service will be below the averages reflected under the fee structure of section Comm 2.68.

Small Business Impact

The Virginia Graeme Baker Pool and Spa Safety Act has a compliance date of December 19, 2008. The department estimates approximately 80% of the existing 3,700 public swimming pools and water attractions will be able to take advantage of the reduced plan review fees. The plan review fees for pool and water attraction modifications are reduced by 33%. The reduction will save pool and water attraction owners \$60 to \$325 per plan submittal.

An economic impact report has not been required to be prepared.

Fiscal Estimate

Summary

The rules temporarily roll back the fees for plan review and inspection of modifications to public swimming pools and water attractions to those amounts charged prior to December 1, 2008. The department estimates approximately 80% of the existing 3,700 public swimming pools and water attractions will be able to take advantage of the reduced plan review fees. The plan review fees for pool and water attraction modifications are reduced by 33%. The reduction will save pool and water attraction owners \$60 to \$325 per plan submittal. The department estimates that 20% of the plan submittals, 592, will fall under the category involving department inspections and 80% of the plan submittals, 2,368, will fall under the category where the department does not conduct the inspections. Under this assumption the department will not realize \$384,000 in plan review fees during the time period of the emergency rules.

State fiscal effect

Decrease existing revenues.

Local government fiscal effect

None.

Long-range fiscal implications

No long-range fiscal implications are anticipated.

Contact Information

The agency contact person is Robert DuPont, Bureau Director, robert.dupont@wisconsin.gov, (608) 266-8984

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or Email at carol.dunn@wisconsin.gov.

Notice of Hearing

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5 CR 08–110

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1), (4), (13) (b), (15) (a), (b), (f), (h), (k) and (L), 101.12 (3) (h) and 101.63 (1), Stats., the Department of Commerce will hold a public hearing on proposed rules under Chapter Comm 5, relating to building contractor registration and affecting small business.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
January 21, 2009 10:00 a.m.	Conference Room 3B Thompson Commerce Center 201 West Washington Avenue Madison

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or (608) 266–8741 or TDD Relay dial 711 in Wisconsin or (800) 947–3529 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 proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until January 28, 2009, 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. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at jim.quast@wisconsin.gov.

Copies of Proposed Rules

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, or Email at roberta.ward@wisconsin.gov, or at telephone (608) 266–8741 or TDD Relay dial 711 in Wisconsin or (800) 947–3529. Copies will also be available at the public hearing.

Analysis Prepared by Department of Commerce

Statutes interpreted

Sections 101.02 (1), (4), (13) (b), (15) (a), (b), (f), (h), (k) and (L), 101.12 (3) (h) and 101.63 (1), Stats.

Statutory authority

Sections 101.02 (1), (4), (13) (b), (15) (a), (b), (f), (h), (k) and (L), 101.12 (3) (h) and 101.63 (1), Stats.

Related statute or rule

Statutes: Sections 101.148, 101.178, 101.654, 101.862, 101.94, 101.95, 101.951, 101.96, 101.985 (1), and 895.07 (13)

Administrative Rules: Sections Comm 5.31, 5.32, 5.323, 5.327, 5.41, 5.42, 5.70 and 5.9905

Explanation of agency authority

Under chapter 101 Stats., the Department of Commerce protects public health, safety, and welfare by promulgating comprehensive requirements for design, construction, use and maintenance of public buildings and places of employment and adopts rules that establish uniform, statewide standards for the construction of one– and 2–family dwellings. Various construction trades are involved in building or modifying these types of structures. Together with building owners and designers, construction trades share a responsibility to ensure that the buildings, relative to the respective trade’s work, do not pose risk to public health and safety.

The registration would enhance the department’s communication, education and oversight efforts for those businesses that contribute in various ways and aspects to the creation or alteration of buildings that limit the safety and health risks for the citizens of Wisconsin. Utilizing the registry of building contractors the department will more efficiently and effectively inform contractors about safety regulations and consumer protection regulations, such as the consumer notice required under s. 101.148 (2), Stats., pertaining to procedures for addressing construction defects.

The department recognizes that by registering Wisconsin building contractors and subcontractors, information pertaining to such registrants can be posted on the internet and made available to the Wisconsin Departments of Workforce Development and Revenue for use in their administration of unemployment insurance, workers compensation insurance and income tax programs, respectively. The registry of building contractors can be used by the aforementioned agencies to reinforce their efforts to minimize the misclassification of employees and to maximize proper participation in unemployment insurance and workers compensation insurance programs and proper payment of income taxes.

Summary of proposed rules

The proposed rules require a registration credential for various building contractors who are involved in the construction or modification of public buildings and places of employment and one– and 2–family dwellings, unless the contractor already holds another type of contractor credential issued by the department. The registration credential is for a contracting business and is not required for each partner or employee who is involved with physically constructing or modifying the structures.

The proposed rules also eliminate several references to old implementation dates that no longer have relevancy.

Comparison with federal regulations

An internet–based search of the code of federal regulations and the federal register did not identify any federal requirements relating to contractor registrations.

Comparison with rules in adjacent states

An Internet–based search for the states of Illinois, Iowa, Michigan and Minnesota found the following:

Illinois:

The state of Illinois does not have any regulations regarding the licensure of building contractors, except roofers.

Iowa:

The state of Iowa requires all individual contractors and businesses performing construction work in Iowa to be registered. The fee is \$25 for a two year registration. The prerequisites for registration include the demonstration of compliance with worker's compensation insurance requirements and compliance with unemployment tax requirements.

Michigan:

The state of Michigan requires licenses for persons and businesses that contract with property owners to build new homes or remodel homes. The license types are: Residential Builder, and Maintenance and Alteration Contractor. The Maintenance and Alteration Contractor is restricted to perform only specific trades and services for which they are licensed. The fee is \$225 for a three year license. Applicants for the license must complete 60 hours of approved education and pass an examination. Michigan does not have a licensing law regulating builders of commercial buildings.

Minnesota:

The state of Minnesota requires certifications for persons and businesses that contract with property owners to construct or improve dwellings for habitation by one to four families and where the person or business is involved with two or more special building skills. The Residential Contractor license and Remodeler license are annual licenses. The fees, which are based upon gross receipts, are \$260 to \$360. The application for the license must include a qualifying person who must take the required examination and fulfill the continuing education requirements for the licensee.

Also under the Minnesota Independent Contractor Certification Law, as of January 1, 2009, a certification is required for building contractors where contractors must establish that they are independent contractors versus employees utilizing the "9 Items" test related to Worker's Compensation. The fee for a two year certification is \$250.

Summary of factual data and analytical methodologies

The registration provisions of the proposed rules were developed by analyzing and comparing the current administrative rules under chapter Comm 5 for other types of building contractors currently licensed, certified or registered by the department. The concept of the contractor registration was developed in light of proposed Wisconsin legislation under 2007 SB 228 and AB466, and with consideration of legislation in the states adjacent to Wisconsin.

Analysis and supporting documents used to determine effect on small business

The proposed rules require the registration of individuals and entities that act as building contractors or subcontractors who are involved in the construction or modification of public buildings, places of employment and one- and 2- family dwellings and who are not already credentialed by the department. The department currently credentials several contracting trades, including dwelling contractors, HVAC contractors, electrical contractors and elevator contractors. The rules would apply to those persons and entities engaged in the business of commercial general construction, drywall, plastering, electrical wiring, finish carpentry, flooring, framing carpentry, glass and glazing, insulation, masonry and stone work, plumbing, concrete work, roofing, siding,

building site preparation and/or stabilization, structural steel, tile and terrazzo, wall coverings, and other building or equipment specialties.

The department estimates that the number of contractors to be registered under the rules would be 30,000. A contractor registration would cost \$100 for a 4-year term if applied for electronically and \$115 if applied for via paper. The department does not believe that this registration and fee would pose a significant impact on businesses.

An economic impact report has not been required to be prepared.

Small Business Impact***Initial regulatory flexibility analysis****Types of small businesses that will be affected by the rules*

The proposed rules require the registration of individuals and entities that act as building contractors or subcontractors who are involved in the construction or modification of public buildings, places of employment and one- and 2- family dwellings and who are not already credentialed by the department. The department currently credentials several contracting trades, including dwelling contractors, HVAC contractors, electrical contractors and elevator contractors. The rules would apply to those persons and entities engaged in the business of commercial general construction, drywall, plastering, electrical wiring, finish carpentry, flooring, framing carpentry, glass and glazing, insulation, masonry and stone work, plumbing, concrete work, roofing, siding, building site preparation and/or stabilization, structural steel, tile and terrazzo, wall coverings, and other building or equipment specialties.

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

No additional reporting, bookkeeping or other procedures are required above the registration of the building construction business.

Types of professional skills necessary for compliance with the rules

There are no new types of professional skills necessary for compliance with the rules.

Rules have a significant economic impact on small businesses
No.

Fiscal Estimate***Assumptions used in arriving at fiscal estimate***

The rules require a registration credential for various building contractors who are involved in the construction or modification of public buildings and places of employment and one- and 2-family dwellings, unless the contractor already holds another type of contractor credential issued by the department. The type of contracting businesses required to be registered under the rules include commercial general construction, drywall, plastering, electrical wiring, finish carpentry, flooring, framing carpentry, glass and glazing, insulation, masonry and stone work, plumbing, concrete work, roofing, siding, building site preparation and/or stabilization, structural steel, tile and terrazzo, wall coverings, and other building or equipment specialties.

The department estimates that there would be 30,000 contracting businesses that would be required to obtain registrations. The department proposes to charge \$100 for a 4-year, building contractor registration. There is also a \$15 initial application fee that would be waived if the applicant applies and pays for the registration via the internet. The department estimates that it would realize approximately \$806,250 in revenue annually.

The department anticipates that the workload associated with this registration can be managed with information technology usage and within current staff levels associated with the administration of the commercial building code program and the one- and 2- family dwelling code program.

State fiscal effect

Increase existing revenues.

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

Local government fiscal effect

No local government costs.

Fund sources affected

PRO

Long-range fiscal implications

None are anticipated.

Environmental Analysis

The Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed 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.

Contact Information

The agency contact person is Robert DuPont, Bureau Director, robert.dupont@wisconsin.gov, (608) 266-8984

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or Email at carol.dunn@wisconsin.gov.

Notice of Hearing

Insurance

CR 08-112

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., the Office of the Commissioner of Insurance will hold a public hearing to consider the adoption of the proposed rulemaking order affecting section Ins 3.39, Wis. Adm. Code, relating to Medicare supplement insurance.

Hearing Information

Date: January 27, 2009

Time: 1:00 p.m., or as soon thereafter as the matter may be reached

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

Submission of Written Comments

Written comments can be mailed to:

Julie E. Walsh
Legal Unit — OCI Rule Comment for Rule Ins 339
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh
Legal Unit – OCI Rule Comment for Rule Ins 339
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Comments can be emailed to:

Julie E. Walsh
julie.walsh@wisconsin.gov

Comments submitted through the Wisconsin Admin. Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in this Notice of Hearing.

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

Statutes interpreted

Sections 185.983 (1m), 600.03, 601.01 (2), 609.01 (1g) (b), 625.16, 628.34 (12), 628.38, 631.20 (2), 632.73 (2m), 632.76 (2) (b) and 632.81, 632.895 (6) and (9), Wis. Stats.

Statutory authority

Sections 601.41, 625.16, 628.34, 628.38, 632.73, 632.76, 632.81, Wis. Stats.

Explanation of agency authority

The statutes all relate to the commissioner's authority to promulgate rules regulating the business of insurance as it relates to Medicare supplement and Medicare replacement insurance products. Specifically, ss. 601.41, 625.16, 628.38, 632.73, 632.76, and 632.81, Wis. Stats., permit the commissioner to promulgate rules regulating various aspects of Medicare supplement and Medicare replacement products while ss. 628.34, and 628.38, Wis. Stats., authorize the commissioner to promulgate rules governing disclosure requirements and unfair marketing practices for disability policies, which includes Medicare supplement and Medicare replacement products.

Related statutes or rules

The Centers for Medicare & Medicaid Services (CMS) required the National Association of Insurance Commissioners, (NAIC) to make conforming changes to the Medigap model regulation by incorporating changes necessary to implement requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA Public Law 110-223) and delegated the function of implementing the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA, Public Law 110-175). The GINA law requires states to adopt necessary changes by September 24, 2009 and to have regulations in place for MIPPA by June 1, 2010. States are required to adopt the NAIC model revision in order to continue to regulate the Medigap marketplace.

CMS delegates enforcement of MIPPA and GINA and the underlying Medicare supplement and Medicare replacement insurance products to the states that have incorporated into the states insurance regulations, the NAIC Model Act. To date Wisconsin has passed several of Model Acts through statute and most frequently administrative rule governing the Medicare supplement and Medicare replacement products. In Wisconsin Medicare supplement and Medicare replacement products are currently regulated through s. Ins 3.39, Wis. Adm. Code, inclusive of the appendices. The proposed rule modifies s. Ins 3.39, Wis. Adm. Code, and several appendices in order to comply with the MIPPA and the NAIC requirements, to the extent necessary, and updates the appendices to reflect current requirements.

Plain language analysis and summary of the proposed rule

The proposed rule implements modifications delineated by the NAIC Medicare Supplement Insurance Minimum Standards Model Act that includes modifications to comply with both GINA and MIPPA. Medigap policies are policies purchased by Medicare beneficiaries to cover Medicare deductibles, co-insurance and selected services that Medicare does not cover. Medicare establishes eligibility rules, benefits and coverage limits. The proposed rule incorporates the NAIC Model Act into Wisconsin's current Medicare supplement and Medicare replacement rules.

The proposed rule contains a new paragraph that specifically implements the GINA requirements as they relate to Medicare supplement or replacement plans. The proposed rule updates requirements relating to the submission of form filings and advertisements to the office including the repeal of Appendices currently numbered 2 and 3 and modification of s. Ins 3.39 (15).

The proposed rule implements the changes to the Medicare supplement benefits that are to be effective by June 1, 2010 in accordance with MIPPA. Specifically, although Wisconsin is a waived state, the office is proposing to incorporate the benefits contained within the federal newly created standardized plans labeled "M" and "N", into two new rider options. These riders will create a Medicare Part A 50% deductible with that has no out-of-pocket maximum limitation and will create a Medicare Part B 100% deductible with co-payment requirements for office and emergency room visits.

While the federal standardized plans eliminate the preventative health care coverage, the proposed rule retains those benefits. Also, although the standardized plans are first incorporating a hospice care benefit while the office has had such benefit for over 3 years and will retain the benefit into the June 1, 2010 benefits. The proposed rule includes a newly created paragraph to address insurers' use of new or innovative benefits as contained in the NAIC Model Act.

For clarity, the proposed rule renumbers existing appendices to include newly created appendices 2 through 6 for the Medicare supplement plans that are effective on or after June 1, 2010. The new appendices follow product lines with one appendix dedicated to premium information and various disclosures. Parallel cites are proposed to ease use of the new regulations by creating ss. Ins 3.39 (4s), (5m) and (30m).

The proposed rule preserves the regulatory oversight of products primarily sold to Wisconsin seniors and maintains rigorous standards for disclosures benefits, consumer rights and marketing practices. In furthering this oversight, the proposed rule includes specific reference to MIPPA that requires insurers that are marketing and selling insurance

products to Wisconsin seniors enrolled in Medicare Advantage to fill in "gaps" that those products comply with the Medicare supplement regulations.

Comparison with federal regulations

The NAIC Model Act implements MIPPA, GINA and previous federal Medicare supplement and Medicare replacement regulations. CMS permitted NAIC a narrow period to time to amend its model act and permitted states to implement the updated NAIC Model Act to retain the regulatory oversight of Medicare supplement and replacement insurance for the modified products that are to be effective on or after June 1, 2010. The department of labor and CMS require implementation of the requirements contained in GINA by July 1, 2009.

Comparison of rules in adjacent states

Iowa:

Iowa makes available to its Medicare beneficiaries Medigap policies A through J as required by the Medicare reform provisions under OBRA 1990 and the prior NAIC Model Regulation. Iowa will have to amend its regulations to create new Medigap plans M and N, and to incorporate the hospice care benefit as well as the new and innovative benefit requirements as required by MIPPA. Iowa will also have to comply by implementing the GINA requirements.

Illinois:

Illinois makes available to its Medicare beneficiaries Medigap policies A through J as required by the Medicare reform provisions under OBRA 1990 and the prior NAIC Model Regulation. Illinois will have to amend its regulations to create new Medigap plans M and N, and to incorporate the hospice care benefit as well as the new and innovative benefit requirements as required by MIPPA. Illinois will also have to comply by implementing the GINA requirements.

Minnesota:

Minnesota, like Wisconsin, received a waiver from the federal standardization regulations. Minnesota makes available to its Medicare beneficiaries two standardized policies (basic and extended basic). Minnesota will have to amend its Medicare supplement regulations to create two cost-sharing plans. It also will have to amend its regulations to include the prohibitions and other changes under GINA.

Michigan:

Michigan makes available to its Medicare beneficiaries Medigap policies A through J as required by the Medicare reform provisions under OBRA 1990 and the prior NAIC Model Regulation. Michigan will have to amend its regulations to create new Medigap plans M and N, and to incorporate the hospice care benefit as well as the new and innovative benefit requirements as required by MIPPA. Michigan will also have to comply by implementing the GINA requirements.

Summary of factual data and analytical methodologies

OCI review of complaints, NAIC models, insurer's financial information CMS data indicates that Medicare currently covers 40 million Americans, 814,183 of whom are Wisconsin residents as of 2004. An estimated 27 percent of Medicare beneficiaries are covered by Medigap policies.

Information collected by the OCI indicates that 75 insurance companies offer Medicare supplement, Medicare cost and Medicare select (Medigap) policies to Wisconsin consumers eligible for Medicare due to age or disability. In addition, there are 25 insurance companies that have Medigap policyholders although the companies no longer market Medigap coverage in Wisconsin. At year end 2007, there

were 247,142 Wisconsin Medicare beneficiaries with Medigap policies. The majority of these Wisconsin Medicare beneficiaries have Medigap policies that will be affected by the Medigap reforms under the MIPPA and GINA.

A 2000 report by CMS, Office of Research, Development, and Information, based on 2007 Medicare data indicates that Medicare paid 54–56% of the health care expenses of persons 65 or over, and private health insurance, including Medicare supplement policies paid 16% of these health care expenses. The report indicated that overall annual medical expenses in 2005 per Medicare beneficiaries equaled \$6,697.

Analysis and supporting documentation used to determine effect on small businesses

OCI reviewed financial statements and other reports filed by life, accident and health insurers and determined that none qualifies as a small business. Wisconsin currently has 75 insurance companies offering Medicare supplement, Medicare cost and Medicare select insurance plans. None of these insurers meet the definition of a small business under s. 227.114, Wis. Stats.

Small Business Impact

This rule does not have a significant impact on regulated small businesses as defined in s. 227.114 (1), Wis. Stat. OCI maintains a database of all licensed insurers in Wisconsin. The database includes information submitted by the companies related to premium revenue and employment. In an examination of this database, OCI identified that 75 insurance companies offer Medicare supplement, Medicare cost and Medicare select (Medigap) policies to Wisconsin consumers eligible for Medicare due to age or disability and none of those companies qualify by definition as a small business. In addition, 25 insurance companies have Medigap policyholders although the companies no longer market Medigap coverage in Wisconsin. Again, none of these 25 companies qualifies by definition as a small business.

This rule does not impose any additional requirements on small businesses.

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

Initial regulatory flexibility analysis

Types of small businesses affected

Insurance agents, LSHO, Town Mutuals, Small Insurers, etc.

Description of reporting and bookkeeping procedures required

None beyond those currently required.

Description of professional skills required:

None beyond those currently required.

OCI small business regulatory coordinator

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

Fiscal Estimate

There will be no state or local government fiscal effect.

The proposed rule will not significantly impact the private sector. Insurers offering Medigap policies (Medicare supplement, Medicare cost, and Medicare select policies) will incur costs associated with developing new Medigap policies and marketing materials, mailing riders and explanatory

materials to existing policyholders and reprogramming claim processing systems. However, these costs are offset by the insurers' ability to continue offering Medigap policies to Wisconsin consumers.

Agency Contact Person and Copies of Proposed Rules

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

Inger Williams, OCI Services Section, at:
 Phone: (608) 264–8110
 Email: inger.williams@wisconsin.gov
 Address: 125 South Webster Street — 2nd Floor
 Madison WI 53703–3474
 Mail: PO Box 7873, Madison, WI 53707–7873
 Web site: <http://oci.wi.gov/ocirules.htm>

Notice of Hearings

Natural Resources

***Environmental Protection — Solid Waste Management,
 Chs. NR 500—
 CR 08–111***

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 289.05, 289.06, 289.07 and 299.11, Stats., the Department of Natural Resources will hold a public hearing on the creation of Chapter NR 528, Wis. Adm. Code, relating to the management of accumulated sediment from storm water management structures.

Hearing Information

The hearings will be held on:

<u>Date and Time:</u>	<u>Location:</u>
February 11, 2009 Wednesday at 11:00 a.m.	Wausau Room Marathon County Public Library 300 N. 1st Street Wausau, WI 54403 <i>[Parking is available in the JC Penney ramp, kitty-corner from library at the intersection of E. Washington and N. 1st Street]</i>
February 12, 2009 Thursday at 11:00 a.m.	Room G09 Natural Resources Bldg. (GEF 2) 101 South Webster Street Madison, WI 53707

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 contact Jack Connelly in writing at DNR, Bureau of Waste and Materials Management, P.O. Box 7921, Madison, WI 53707; by E-mail to Johnston.Connelly@Wisconsin.gov; or by calling (608) 267–7574 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. WA–22–08.)

Submission of Written Comments and Copies of Proposed Rules

Written comments on the proposed rule may be submitted via U.S. mail to Mr. Jack Connelly, Bureau of Waste and Materials Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to Johnston.Connelly@Wisconsin.gov. Comments may be submitted until February 20, 2009. 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. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Jack Connelly, Bureau of Waste and Materials Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 267-7574.

Analysis Prepared by Department of Natural Resources

Statutes interpreted

Sections 289.43, 289.91 and 299.11, Stats.

Statutory authority

Sections 227.11 (2) (a), 289.05, 289.06, 289.07 and 299.11, Stats.

Related statute or rule

None

Plain language analysis

With an ever-increasing volume of sediment to be managed in the cleaning of storm water and sediment control structures, coupled with a need to maximize the effectiveness of reduced department staff resources, it is necessary to develop an innovative and proactive regulatory approach. This proposed rule would create a framework of self regulation for the management of sediment obtained when cleaning storm water sediment control structures. The proposed rule would place the department in an oversight role, thereby minimizing and targeting uses of scarce staff resources. Further, the proposed rule provides a reasonable, safe and consistent approach in managing end uses of accumulated sediment. The department has worked with a Technical Advisory Committee (TAC) to obtain input and advice from affected stakeholders.

Comparison with federal regulations

There are no federal regulations pertaining explicitly to the management of sediment accumulated in storm water and sediment control structures. The sediment is generated as a consequence of compliance with the storm water discharge permit program of the federal Clean Water Act.

Comparison with rules in adjacent states

Adjacent states have not developed specific rules to address the material that accumulates in storm water management structures. However, they do have rules to address other dredge materials and they use those rules to answer questions about where to go with accumulated sediment in storm water ponds.

Iowa has a permit by rule approach to land application of any material. This is currently a catch-all for all material disposal and they are considering going to designating beneficial uses. Under the permit by rule approach, if the material meets a set of criteria they do not need a permit for disposal. The criteria include testing for petroleum content and following setback parameters similar to the Federal EPA 503 Biosolids Rule which establishes standards for the use and disposal of municipal sewage sludge. This approach is similar to Wisconsin's intent to have a rule that provides

enough information for the user to self certify that they have used or disposed of the material properly. Iowa has found that the permit by rule approach results in very few contacts or questions from the public.

Minnesota also has a general management approach for dredged material that the accumulated sediment from storm water ponds would fall into. The state recognizes that it would be beneficial to customize the rules to address accumulated sediment from storm water. Similar to the rule proposed here, dredged material can be handled differently depending on the amount of sand in the material, how much material is being handled, what testing suggests about the contaminant levels and the potential disposal sites. For example, in Minnesota, no permit is needed for disposal of less than 3,000 cubic yards with 93% or more sands. The rule proposed here establishes a de minimus of 100 cubic yards for material with 85% or more sands. For all other sediment Minnesota requires an extensive sediment characterization of the pollutant levels in the material and this information determines the management options and whether the disposal qualifies for a general or individual permit. The general permit sets thresholds and criteria that if met, allows a streamlined permit process. The rule proposed here would not require a permit at all and the sediment manager would only contact the department if they were concerned about the results of the sediment characterization and had questions about what end use option to select. Minnesota also encourages consideration of use or reuse options rather than disposal in a landfill.

Michigan considers the material in storm water ponds and catch basin sumps to be process water once it comes time to clean it out. When the liquid portion is separated from the solid material it is covered under a set of rules that governs liquid industrial waste. In some cases it can be discharged to the sanitary sewer system, if approved by the local sewer authority, but other options are available. The solids are handled as a solid waste under a separate set of rules. Testing of certain parameters is required before disposing of the material although the most likely disposal is to a landfill. The transporter of the material has to meet applicable transporter requirements.

Illinois has limited guidance on what to do with sediment that accumulates in storm water ponds. If the contents are strictly storm water and there is no septic or sewage mixed in, then it can be disposed of anywhere in an upland location, but not in the floodway. No sampling or any other testing or evaluation is required. Storm water pond sediment is not considered a solid waste unless the agency is aware of, or notified that, a spill of some contaminant occurred in the drainage basin. Anyone removing sediment from a storm water pond will be cautioned that they must check with the Army Corps of Engineers if they are close to a waterway to see if a permit is required.

Summary of factual data and analytical methodologies

There is an increasing number storm water and sediment control structures coming on-line as a result of more comprehensive storm water control requirements imposed by the USEPA's revisions to the storm water discharge permit program of the Clean Water Act. The department, in accord with its responsibilities as a delegated program, then promulgated revisions to ch. NR 216, effective August 1, 2004. To address the increase in both the number of structures and the volume of accumulated sediment, the department has developed a streamlined approach to sediment management featuring self-regulation. The department has identified stakeholders who will be affected by the proposed rule and formed a Technical Advisory Committee (TAC) comprised of

representatives of these organizations and interests. The department has met with this TAC five times in 2007 and 2008 to obtain their input and advice in writing rule language for this streamlined approach to sediment management.

Analysis and supporting documents used to determine the effect on small business

The proposed rule for sediment management, ch. NR 528, is expected to reduce costs to small businesses. Currently, compliance with the department's existing rules, ch. NR 216, Wis. Adm. Code, is resulting in an increase in the number of storm water practices for small business. Routine maintenance of these sediment control structures generates accumulated sediment. Under existing solid waste rules, the NR 500 series, a person responsible for cleaning out a sedimentation pond may either transport the sediment to a licensed landfill or apply to the solid waste program for an exemption. By eliminating the need to apply for an exemption and removing the need for the department to approve the end use chosen by small business, the costs to small business will be reduced.

The proposed rule is also expected to reduce costs to small business by simplifying and clarifying the process and thereby providing known expectations for small business. Further, because the department's role is greatly reduced, costs owing to any delays that result from the current departmental review process for sediment management proposals is eliminated. Because of the proposed self regulation process, project timing would be completely under the control of the small business.

Likewise, because submittal of reports to the department is eliminated, costs normally associated with submitting these reports are eliminated. Instead, the self-certification process provides a logical flow through the sediment evaluation and management process and all data and records are maintained by the small business. Further, costs associated with sediment sampling and lab analysis are reduced under the proposed rule because the number of parameters is greatly reduced in most cases. Even when more analysis is warranted because indications of contamination are detected, it is likely that the simplified requirements in the proposed rule will still reduce sediment evaluation costs. Current department rules do not specify how the sediment must be characterized so staff can be inconsistent in what they require and in an effort to be prudent, often choose an extensive list of compounds for which to analyze. The proposed rule includes a specific list that is considerably shorter and thus reduces sampling costs.

Small Business Impact

The rule revisions will have a neutral to net positive effect on small businesses since they would otherwise have to comply with existing requirements. Under existing rules a sediment manager, when cleaning out a storm water management structure, must either take the sediment to a licensed landfill or apply with the Waste and Materials Management program for an exemption. This proposed rule would eliminate the requirement to apply for an exemption when the sediment manager determines that the sediment is clean enough to take to an end use site. Further, the proposed rule provides other end use options that will usually be less expensive than costs associated with the transportation distance to the licensed landfill and the tipping fees at the landfill.

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. As the DNR's position of Small Business Regulatory Coordinator is currently vacant, if you have

questions regarding the impact to small businesses you may contact Jack Connelly by E-mail at Johnston.Connelly@Wisconsin.gov or by phone at (608) 267-7574.

Fiscal Estimate

Summary

The DNR has made a determination that the proposed rules have no fiscal effect on state government and the fiscal effect on local government and the private sector is indeterminate.

Background

The storm water permit program requires new development, and in some cases existing development, to treat the runoff from impervious surface with water quality practices that remove total suspended solids. This has resulted in an increase in the number of such practices in the last five years and this trend is expected to accelerate in the future. Maintenance of these practices requires removal of the accumulated sediment every 10-20 years, depending on the storage capacity of the storm water management structures (ponds). The person responsible for removing the sediment, the sediment manager, may be a local unit of government including towns, villages, cities and counties and even school districts as well as private entities such as business owners and homeowner associations.

Rule summary

Under the current solid waste rules, this sediment can be taken to a licensed landfill, or the sediment manager can request an exemption from the department to place the material in a location other than a landfill. This exemption request requires the sediment manager to conduct sediment sampling and lab analysis at the discretion of the department reviewer. The relative newness of these ponds means that department staff has limited information on the environmental risk of this material and so the list of parameters to sample can be lengthy. There is also a fee associated with the request for exemption.

The proposed rule will identify minimum parameters to test for and some key threshold levels to assist the sediment manager in deciding the appropriate end use. The proposed rule also identifies when sampling for additional parameters may be necessary due to the nature of the material. Even when more analysis is warranted because indications of contamination are detected, it is likely that the simplified requirements in the proposed rule will reduce sediment evaluation costs. The sediment manager can use the rule and guidance to select an end use and then follow through with that decision without requesting approval from the department. The proposed rule is based on a self-certification process. This saves both time and money.

State fiscal effect

Implementation of the proposed rule would not increase or decrease the revenue to the department. Currently staff process exemption requests and associated review fees when they are submitted by a sediment manager. However, there have been relatively few requests to date. Therefore, there is not a significant revenue stream from this source. As the number of sediment ponds needing to be cleaned out increases with time, the revenue coming into the department would increase and more staff would be needed for the case-by-case reviews. The department does not have sufficient staff to review these submittals so instead prefers to implement the proposed self-certification approach which requires little direct staff involvement. This approach means the future revenue stream will be less than if the existing program were still being used, but the demand on staff time would be significantly less.

Local and private fiscal effect

The cost to sample and analyze for specific parameters is expected in most cases to be less than what is currently required with an exemption request. While it is anticipated that the overall cost to the sediment manager will be neutral or even less than under the current system, this difference cannot be quantified. Therefore the fiscal effect of the proposed rule is indeterminate for both local units of government and the private sector.

Environmental Analysis

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

Agency Contact Person

Jack Connelly
 Phone: 608) 267-7574
 Fax: (608) 267-2768
 E-mail: Johnston.Connelly@Wisconsin.gov

Notice of Hearing
Transportation
CR 08-113

NOTICE IS HEREBY GIVEN that pursuant to s. 341.35, Stats., the Department of Transportation will hold a public hearing to consider the creation of Chapter Trans 126, Wis. Adm. Code, relating to municipal or county vehicle registration fee.

Hearing Information

The hearing will be held:

Date	Location
January 28, 2009 at 1:30 PM	Room 144-B Hill Farms State Transportation Bldg. 4802 Sheboygan Avenue Madison, Wisconsin

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

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

Copies of Proposed Rules

A copy of the proposed rule may be obtained upon request from Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail at carson.frazier@dot.state.wi.us.

Analysis Prepared by the Wisconsin Department of Transportation**Statutes interpreted**

Section 341.35, Stats.

Statutory authority

Sections 227.11, 341.35 (4), (6), (6m), and (8), Stats.

Explanation of agency authority

The Wisconsin Department of Transportation is authorized to administer and collect a municipal or county vehicle registration fee when a municipality or county elects to impose such a fee by ordinance and notifies the Department of such an election, pursuant to s. 341.35, Stats. The Department's Division of Motor Vehicles collects a municipality or county vehicle registration fee at the same time it collects the state vehicle registration fee.

Related statute or rule

Section 349.03 (2), Stats., provides that [n]o local authority may enact or enforce any traffic regulation...requiring local registration of vehicles, except as authorized by s. 341.35, Stats.

Plain language analysis

Chapter Trans 126 governs the Department's administration of the municipality or county vehicle registration fee. This proposed amendment increases from 60 days to 90 days the notice that municipalities and counties must give the Department, prior to the first day of the month in which an ordinance to enact, amend, or repeal the municipal or county vehicle registration fee is effective. In recent years, statutory changes have required vehicle registration renewal notice mailings to be advanced. As a result, 60-day notice from the municipality or county is insufficient time for the Department to place updated information on renewal notices before mailing the notices to customers.

This proposed amendment also clarifies operational questions. The rule states how the Department determines where a vehicle is customarily kept, and how the Department determines which vehicles receive the municipal or county registration fee calculation upon initial implementation. The proposed amendment also updates the mailing address for the Division of Motor Vehicles, and clarifies references to the municipal or county vehicle registration fee and the administrative fee per vehicle application.

This proposed amendment also removes obsolete language.

Comparison with federal regulations

No federal regulations relate to this rule.

Comparison with rules in adjacent states**Michigan:**

Michigan does not have a local vehicle registration fee that is similar to Wisconsin's municipal or county vehicle registration fee, collected by the state DMV on behalf of the local governments, along with the state vehicle registration fee.

Minnesota:

Minnesota counties may assess a "wheelage tax," similar to Wisconsin's municipal or county vehicle registration fee, collected by the state DMV on behalf of the local governments, along with state vehicle registration fee.

Illinois:

Illinois does not have a local vehicle registration fee that is similar to Wisconsin's municipal or county vehicle registration fee, collected by the state DMV on behalf of the local governments, along with the state vehicle registration fee.

Iowa:

Iowa does not have a local vehicle registration fee that is similar to Wisconsin's municipal or county vehicle registration fee, collected by the state DMV on behalf of the local governments, along with the state vehicle registration fee.

Summary of factual data and analytical methodologies

Section 341.08 (4m), Stats., requires that the Department mail vehicle registration renewal notices to customers at least 30 days before registration expiration. As provided by s. 341.28(7)(a), Stats., automobile registration expiration may be any day of the month. The Department mails registration renewal notices for all registrations expiring during a month at one time. The Department must make, and test, any changes to text or billing on the renewal notice prior to selecting registration records for printing and mailing. As a result, the 60-day notice from municipalities or counties is insufficient, and this amendment increases the time to 90 days.

The Department has received numerous questions from municipalities and counties considering enacting a municipal or county vehicle registration fee, regarding operational issues. This amendment clarifies these points, for the benefit of those governments considering enacting such an ordinance. In particular, the amendment clarifies how the Department determines which county or municipality the vehicle is kept in; how the Department determines which vehicles are subject to the municipal or county registration fee calculation upon initial implementation; updates the mailing address for the Division of Motor Vehicles; and clarifies references to the municipal or county vehicle registration fee and the administrative fee per vehicle application.

Analysis and supporting documentation used to determine effect on small businesses

This proposed rule applies to municipalities and counties that enact, amend or repeal a municipal or county registration fee. Although a municipality or county action to enact, amend

or repeal a municipal or county registration fee may affect small businesses, this rule has no effect on small businesses.

Small Business Impact

This proposed rule has no effect on small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. Although a municipality or county action to enact, amend or repeal a municipal or county registration fee would affect the revenues of the municipality or county, this rule has no fiscal effect.

Anticipated costs incurred by private sector

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

Agency Contact Person and Submission of Written Comments

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us, to obtain copies of the proposed rule.

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

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.

Health Services

Community Services, Chs. DHS 30—

CR 07-095 (Corrected)

Revises Chapter DHS 83, relating to community-based residential facilities (CBRFs).
Effective 4-1-09.

Rules Published with this Register and Final Regulatory Flexibility Analyses

*The following administrative rule orders have been adopted and published in the **December 31, 2008**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Agriculture, Trade and Consumer Protection CR 07-004

Creates Chapter ATCP 106, relating to price gouging during an emergency. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

Depending on the scope of a declared emergency, this rule could conceivably affect nearly every business that sells consumer goods and services in the state (whether at wholesale or retail). A declared emergency may be statewide or localized in scope, and may be broad-based or confined to certain economic sectors. The impact of this rule will vary accordingly. This rule could have a substantial impact on a wide array of businesses. However, it is not possible to predict the impact on individual businesses or on business generally.

Whenever it applies in an emergency, this rule will limit the prices that may be charged by affected businesses. This rule prohibits prices that are more than 15% higher than the highest pre-emergency price during the previous 60 days, unless sellers can document that their higher prices do not exceed their cost plus normal markup. Sellers are thus free to pass on relevant cost increases if they can document those increases.

This rule applies only when the Governor, by executive order, issues an emergency declaration. The emergency declaration determines the scope of coverage, and may exempt certain business sectors from coverage. This rule applies only for the period of time that the emergency declaration remains in effect.

This rule provides some latitude for price adjustments in response to supply and demand, and allows sellers to pass on bona fide cost increases. However, this rule ultimately limits the prices that manufacturers, wholesaler distributors, and retailers may charge in emergency situations. Some sellers may withhold goods or services from the market rather than sell at those limited prices. Retailers may benefit from wholesale price limitations, but may suffer from wholesaler decisions to withhold goods or services from distribution.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has adopted a separate rule outlining its small business enforcement policy (see ATCP 1, subch. VII). DATCP will follow that rule in the administration of this price gouging rule. DATCP will, to the maximum extent feasible, seek voluntary compliance with this price gouging rule.

This rule first applies to small businesses 2 months after it first applies to other businesses, as required by s. 227.22 (2) (e), Stats. This rule will not apply to small businesses during declared emergencies that fall within that 2-month period, but will apply to small businesses during subsequent declared

emergencies. If a declared emergency period starts before the small business initial applicability date, but extends beyond the small business initial applicability date, this rule will apply to small businesses for that portion of the emergency period that occurs after the small business initial applicability date.

Summary of Comments by Legislative Review Committees

On October 3, 2007, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection and to the Assembly Committee on Judiciary and Ethics.

On October 8, 2007, the Senate Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection requested a meeting with DATCP regarding the rule, thereby triggering a 30 day extension (to December 3, 2007) on the legislature's review period. The meeting was held on October 16, 2007.

On October 24, 2007, the Senate Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection held a hearing regarding the rule, but took no formal action. However, the committee held an Executive Session on November 29, 2007 and passed a motion (5 to 0) to request that DATCP consider modifications to the rule. The motion specified that if DATCP did not agree to consider modifications, the committee would object to the rule pursuant to s. 227.19(4)(d)6., Stats. DATCP agreed to consider the modifications.

On January 18, 2008, DATCP Secretary Nilsestuen issued a letter to Senator Wirch (Chair of the Senate Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection) stating that DATCP had considered the four modifications suggested by committee, and had agreed to two of them. Specifically:

- The committee asked that DATCP consider increasing the prima facie price increase cap from 10% to 15%. DATCP agreed and revised the rule to include a 15% increase.
- The committee asked that DATCP consider changing the standard of proof required to justify a higher price. DATCP agreed that the "clear and convincing" language in the original DATCP draft was unnecessary, and therefore removed that language.
- The committee asked that DATCP consider changing the type of evidence required to justify a higher price. The original DATCP draft of the rule required that a seller who wishes to claim an exemption to price increases greater

than the allowed 10% must be able to show that at the time of sale, the seller possessed and relied upon accurate information showing that the sale qualified for the exemption. The committee asked that sellers not be required to have documents in their hands at the time of sale. DATCP responded to this request by saying that the rule requires information, not necessary specific written documents. DATCP did not make this requested change.

- The committee asked that DATCP consider allowing businesses to charge higher prices, based on their own subjective assessment of “business risk”. DATCP refused this change because it left no objective standard for compliance.

The revised proposed rule was re-submitted to the appropriate Senate and Assembly committees on January 18, 2008.

The Assembly Committee on Judiciary and Ethics held a hearing on the rule on January 31, 2008, and then voted (10–0) to request that DATCP make additional modifications to the rule. On February 4, 2008, Senator Wirch sent a letter to DATCP stating that he agreed with the request of the Assembly committee even though the Senate Committee on Small Business Preparedness, Workforce Development, Technical Colleges and Consumer Protection did not take a vote to request modifications. DATCP responded to both Representative Suder and Senator Wirch by letter dated February 5, 2008 agreeing to consider changes.

On August 28, 2008, DATCP received a letter from Representative Staskunas, member of the Assembly Committee on Judiciary and Ethics, clarifying the provisions of the rule that he believed needed modification.

After considering changes, DATCP notified the committee by letter dated August 29, 2008 that it would further modify the standard of proof required to justify a higher price by eliminating the word “possess”. However, DATCP did not make additional requested revisions to the rule. On September 25, 2008, the Assembly Committee on Judiciary and Ethics objected to the final proposed rule and referred the proposed rule to the Joint Committee for the Review of Administrative Rules.

Sen. Jauch requested a meeting with DATCP to discuss the rule. DATCP met with Sen. Jauch and interested industry representatives on October 23, 2008.

The Joint Committee for Review of Administrative Rules took no action and as a result, did not concur with the objection.

Agriculture, Trade and Consumer Protection **CR 07–073**

Revises Chapters ATCP 99, 100 and 101, relating to agricultural producer security. Effective 1–1–09, except for small businesses, 3–1–09.

Summary of Final Regulatory Flexibility Analysis

Agricultural Producers

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

This rule will generate enough license fee revenue to continue critical financial security monitoring activities such as inspections, compliance evaluations, and review of

contractor financial statements. Without this rule, DATCP would have to curtail key monitoring activities that help control potentially catastrophic financial risks to producers and the producer security fund.

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

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

Contractors

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

Current Cost to Contractors

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

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

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

Declining Cost Burden

If commodity prices, procurement volumes and contractor financial ratios held constant over the next few years, total contractor license fees and fund assessments would actually *decline* because of fee credits and declining formula rates built into the producer security law itself. This rule will reduce that potential decline, at least for the grain and vegetable contractor sectors. Higher commodity prices and procurement volumes, or deteriorating contractor financial ratios, could also offset the decline.

This rule will reduce license fees and fund assessment rates in the milk contractor sector, but increase license fees and fund assessment rates in the other 3 sectors so that those sectors pay a more proportionate share. The following table shows *combined total license fees and fund assessments* by

business sector for FY 2005–06 and FY 2006–07. It also compares projected totals for FY 2009–10 *with* and *without* this rule (these projections may be affected by changing

commodity prices, procurement volumes, contractor financial ratios and other factors):

Total Contractor License Fees and Fund Assessments (Net of Credits)

	FY 2005–06	FY 2006–07	FY 2009–10* <i>Without this rule</i>	FY 2009–10* <i>With this rule</i>
Grain Dealers	\$672,000	\$452,000	\$476,000	\$581,000
Grain Warehouse Keepers	\$210,000	\$194,000	\$181,000	\$444,000
Milk Contractors	\$1,272,000	\$1,002,000	\$959,000	\$855,000
Vegetable Contractors	\$138,000	\$26,000	\$36,000	\$41,000
TOTAL	\$2,292,000	\$1,720,000	\$1,652,000	\$1,921,000

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

Other things equal, there would be a decline in total license fees and fund assessments results from the following features built into the current producer security law (this rule will not change those features):

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

Effects Vary Between Contractors

The impact of this rule may vary considerably between individual contractors within a business sector. License fees and assessments may be affected by a number of variables, including contractor size, contractor financial strength, contractor risk practices and commodity prices.

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

This rule incorporates an "assessment holiday" that will automatically go into affect when industry sector balances and overall fund balances grow to specified levels.

Steps to Assist Small Business

Many of the businesses affected by this rule, including contractors and agricultural producers, are "small businesses." This rule benefits small agricultural producers, by preventing the erosion of the agricultural producer security program that helps protect them against catastrophic financial defaults by contractors.

This rule increases aggregate license fees collected from grain dealers and warehouse keepers. However, the size of the fee increase is not significant in relation to overall business costs (see above). This rule also restructures the license fee

formula, to make it more fair for small businesses (who arguably pay disproportionately high fees compared to large businesses).

For example, under current rules, a grain dealer who procures \$550,000 worth of grain pays the same basic license fee as one who procures 3 times that amount. Under this rule, larger grain businesses would pay a more representative share of overall license fees. The smallest grain dealers and warehouse keepers will likely see license fee *decreases* under this rule.

This rule also provides a similar benefit for small processed potato buyers who are noncontributing vegetable contractors. Under current law, the basic license fee for all contractors in this group is a flat \$500 with some other add-ons. Under this rule, the base license fee would be the lower of a flat \$2,000 or \$25 plus 8.75¢ for each \$100 in purchases. That change would reduce fees for smaller businesses.

Conclusion

This rule will benefit agricultural producers, by preventing erosion of the producer security program that helps protect them against catastrophic financial defaults by contractors.

This rule will affect license fees and fund assessments paid by contractors, including grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. Other things equal, total license fees and fund assessments will actually *decline* over the next few years (with or without this rule), because of fee credits and declining rates built into the producer security law itself. This rule will slow, but not reverse, that decline.

Fund assessments will continue to decline over all business sectors. License fees (net after credits) will continue to decline for milk contractors and vegetable contractors, but will go up for grain dealers and grain warehouse keepers. The increase for grain dealers and grain warehouse keepers will not have any significant impact on their overall business costs.

The new license fee formula for grain dealers and grain warehouse keepers will be more equitable, in that it will require large grain dealers and warehouse keepers to pay a more proportionate share of program costs. As a result, small grain dealers and warehouse keepers may actually see a reduction in license fees.

Summary of Comments by Legislative Review Committees

On August 13, 2007, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Higher Education and to the Assembly Committee on Agriculture. The Senate Committee on Agriculture and Higher Education took no action. The Chair of the Assembly Committee on Agriculture asked for a

meeting with DATCP, and a thirty day extension of the review period, but took no other action.

Agriculture, Trade and Consumer Protection

CR 07-093

Revises Chapters ATCP 74 and 75, relating to local agents regulating retail food establishments for the Department. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

This rule reorganizes and amends the current rules related to local agent agreements. Most of the changes are technical, not substantive. This rule does *not* make any substantive changes nor increase any fees for retail food establishments.

This rule does not affect retail food establishments or other businesses. It only affects local governmental agents that contract with DATCP to license and inspect retail food establishments. In general, this rule will simplify, clarify and streamline the local agent program.

This rule has no adverse impact on retail food establishments, some of which are considered “small businesses” as defined in s. 227.114 (1), Stats. This rule does *not* impose any additional fees, costs, compliance requirements, recordkeeping requirements, or other requirements on retail food establishments.

This rule streamlines and clarifies the contract relationship between DATCP and local health departments that choose to license and inspect retail food establishments in their jurisdictional areas. This rule does not increase costs or fees, and will have no adverse effect on retail food establishments or other businesses, and will have no adverse effect on small businesses.

Summary of Comments by Legislative Review Committees

On August 13, 2008, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Public Health, Senior Issues, Long Term Care and Privacy and to the Assembly Committee on Agriculture. The legislative review period expired on September 26, 2008. No hearings were held and neither committee requested any changes to the rule.

Agriculture, Trade and Consumer Protection

CR 08-027

Revises Chapter ATCP 123, relating to electronic communications services. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

This rule updates and clarifies current rule coverage to ensure that consumers subscribing to electronic communications services (including video services and internet access services) are protected on an equal basis, regardless of the technology or method used to deliver the service. This rule also incorporates new statutory terminology.

Current rules already apply to subscriptions for telecommunications services, including the “conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum.” This rule clarifies that this current coverage includes video services and internet access services. Exclusion of these services would reduce current rule coverage and consumer protection.

This rule does not make major changes in rule content, but does make minor content adjustments to address new service delivery methods and clarify what services are covered by the rule. This rule also incorporates new statutory definitions created by 2007 Wis. Act 42.

DATCP has not incorporated a small business enforcement policy in this rule. Although the current rule covers some small businesses, the modifications made in the rule do not change this coverage or otherwise affect small businesses. DATCP will seek voluntary compliance.

Summary of Comments by Legislative Review Committees

On August 13, 2008, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Commerce, Utilities and Rail and to the Assembly Committee on Energy and Utilities. The Senate Committee Chair on Commerce, Utilities and Rail met with the agency on October 1, 2008, and took no action. The Assembly Committee Chair on Energy and Utilities met with the agency on October 1, 2008 and took no action.

Children and Families

CR 07-102

Revises Chapters DCF 250, 251 and 252, relating to child care centers. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

Most child care centers are small businesses as defined in s. 227.114 (1) (a), Stats. The new rules affecting family child care centers will require outdoor play space on the premises to be within a permanent enclosure that is not less than 4 feet high. As of January 2007, there were 3,120 family child care centers licensed to care for between 4 and 8 children. The Department estimates that 500 to 600 facilities will be affected by this change. This provision is consistent with national safety standards for child care settings. The minimal cost of a fence is \$300. The rules also include oversight requirements for a family child care licensee who does not provide care and supervision for at least 50% of the hours of the center’s operation, including being on the premises for 30 hours per month to carry out the responsibilities of a licensee. This cost is estimated at \$300 per month.

The rules affecting group child care center require directors of a child care center with more than 50 children to obtain a child care administrator’s credential within 3 years. The Wisconsin Technical College System estimates that the cost of obtaining this credential is \$2000 per credential including books and other materials. The T.E.A.C.H. Early Childhood© – Wisconsin scholarship program administered through the Wisconsin Early Childhood Association under contract with the Department of Workforce Development, is available to students enrolled in the Wisconsin Professional Credential for Child Care Administrators program. The T.E.A.C.H. Early Childhood© – Wisconsin scholarship covers 70% of tuition, 75% of books, a travel stipend, up to 15 hours of release time per semester and 75% of the credential fee. The center agrees to provide 20% of tuition, \$300 bonus when a contract is completed and up to an additional 15 hours of release time. The scholarship recipient provides 10% of tuition, 25% of the cost of books and 25% of the credential fee. In addition, the scholarship recipient agrees to remain in his or her current position at the center for a year. Current research show that the quality of child care provided is higher when center directors have higher educational levels.

Summary of Comments by Legislative Review Committees

In response to a meeting with Representative Owens' staff, Representative Albers, Senator Grothman, representatives of the Wisconsin Child Care Administrators Association, and Department staff, the Department agreed to modify the following:

- The provision that child care centers report an injury that requires professional medical treatment is modified from within 48 hours after the occurrence to within 48 hours of the licensee becoming aware of the medical treatment.
- The proposed amendment that would have considered lip balm a medication was removed.
- The proposal that a record of snacks brought in by parents be kept on file for 3 months was removed.

Children and Families

CR 08-066

Revises Chapter DCF 150, relating to the establishment of birth cost orders based on child support guidelines. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

In response to concerns expressed at a meeting with Senator Jauch and advocates, the Department submitted germane modifications that provide:

- The court's consideration of ability to pay will be mandatory, rather than permissive, in the establishment of a birth cost order.
- A birth cost order shall be established based on the low-income birth cost order schedule regardless of whether the father has a child support obligation determined under the low-income child support payer provision.
- The revised rule emphasizes that the birth cost judgment amount set forth in the schedule for Maximum Birth Cost Judgment Amount for Low-Income Payers at 75% to 125% of the Federal Poverty Guidelines is a maximum by adding the phrase "may not exceed."

Commerce

CR 08-030

Revises Chapters Comm 5, 18 and 21, relating to technical requirements for conveyances and licensing of installers of residential conveyances. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

Pursuant to s. 227.19 (3m), Stats., the Department has determined that the rules that update chapters 18 by adopting the latest edition of the elevator and platform lift standards published by the American Society of Mechanical Engineers (ASME) and modifying these standards, where necessary, to reflect any Wisconsin statutes or to improve clarity, and that modify chapter Comm 5 for consistency with recent

legislation will not have a significant impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce

CR 08-054

Revises Chapter Comm 34, relating to amusement rides. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

Chapter Comm 34 establishes minimum standards for the design, construction, operation, maintenance and assembly of amusement rides. The amusement ride code has not been subject to an overall review and update since 2003. The revisions primarily clarify existing rules. In some instances the proposed changes keep the rules consistent with each other and with other Commerce codes. The department utilized an advisory council, the Amusement Ride Council, to gather information on potential impacts, including economic, in complying with both the technical and administrative requirements of code changes. The code council did not identify or convey any impacts to the department.

Summary of Comments by Legislative Review Committees

No comments were received.

Corrections

CR 08-045

Revises Chapter DOC 332, relating to the sex offender registration fee. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

There is no expected effect on small businesses under § 227.114, Stats.

Summary of Comments by Legislative Review Committees

Comments on the rule which were received through the hearing process, including written, oral, and testimony were considered if they were received by July 31, 2008.

Financial Institutions — Securities

CR 08-077

Revises Chapters DFI-Sec 1 to 9, 31, 32 and 35, relating to all aspects of Wisconsin securities regulation, including definitions, securities registration procedures and registration exemptions, securities broker-dealer and investment adviser registration, enforcement powers and procedures, as well as general administrative powers. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

No final regulatory flexibility analysis is required to be included on the basis that the Division of Securities has determined, after complying with s. 227.114, Wis. Stats., that the rules will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were reported.

Insurance
CR 08-053

Revises Chapter Ins 50, relating to audit, control and financial reporting requirements. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

The legislative standing committees had no comments on this rule.

Insurance
CR 08-064

Revises sections Ins 6.79 and 8.10, relating to advisory councils and committees. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were reported.

Natural Resources
CR 04-023

Revises Chapters NR 406, 407, 460, 463 and 484, relating to national emission standards for hazardous air pollutants (NESHAP) for facilities engaged in the secondary production of aluminum. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

Since the rule is required by law to be identical to the existing federal rule, the Department has no flexibility to make any substantial changes to the rule. Because all affected sources must comply with the federal rule, the proposed state rule will have no additional adverse economic impact on small businesses or any other affected source.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. No comments were received from the Committees.

Natural Resources
CR 07-105

Revises Chapters NR 460 and 469, relating to national emission standards for hazardous air pollutants (NESHAP) for halogenated solvent cleaners for the NESHAP general provisions. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

Since the rule is required by law to be identical to the existing federal rule, the Department has no flexibility to make any substantial changes to the rule. Because all affected sources must comply with the federal rule, the proposed state rule will have no additional adverse economic impact on small businesses or any other affected source.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. No comments were received from the Committees.

Natural Resources
CR 08-061

Revises Chapter NR 10, relating to the 2008 migratory game bird seasons and waterfowl hunting zones. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

The rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. No comments were received from the Committees.

Public Instruction
CR 08-052

Revises Chapter PI 30, relating to state special education aid for certain pupil services personnel. Effective 1-1-09.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were reported.

Sections Affected by Rule Revisions and Corrections

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

Revisions

Agriculture, Trade and Consumer Protection

Ch. ATCP 74 (Entire Chapter)

Ch. ATCP 75 (Entire Chapter)

Ch. ATCP 99

ATCP 99.01 (6m), (14m)

ATCP 99.11

ATCP 99.12 (5) (c)

ATCP 99.125

ATCP 99.126

ATCP 99.135 (2) (intro.), (c), (d)

ATCP 99.23

ATCP 99.235

Ch. ATCP 100

ATCP 100.01 (4g), (4r), (5m)

ATCP 100.13 (1) (intro.), (a), (d), (3) (a)

ATCP 100.135

ATCP 100.22 (3)

Ch. ATCP 101

ATCP 101.20 (3g), (3r)

ATCP 101.23

ATCP 101.245

Ch. ATCP 106 (Entire Chapter)

Ch. ATCP 123

ATCP 123.01

ATCP 123.02 (5) (title), (intro.)

ATCP 123.04 (2) (f)

ATCP 123.10 (1), (3), (6), (8)

ATCP 123.12 (1) (b)

ATCP 123.14

Children and Families

Ch. DCF 150

DCF 150.02 (12m)

DCF 150.03 (3)

DCF 150.04 (4) (b)

DCF 150.05

DCF 150 Appendix D

Ch. DCF 250

DCF 250.03 (4m), (10) (11) (intro.), (d), (13m), (14m), (15) (b) to (d), (18), (27), (28), (30m), (34), (37)

DCF 250.04 (2) (e), (g) to (i), (L), (m), (3) (intro.), (a), (e), (i), (j), (L), (m), (4) (c), (5) (intro.), (d), (g) to (k), (6) (a)

DCF 250.05 (1) (b), (c), (2) (a), (b), (3) (e), (L), (m), (4) (d), Table

DCF 250.06 (1) (a), (b), (2) (e), (3), (4) (e), (6) (b), (c), (7) (a), (9) (d), (11) (b), (12) (b), (c)

DCF 250.07 (1) (a), (b), (2) (c), (3) (e), (6) (e) to (g), (L), (7) (f), (h)

DCF 250.08 (3), (4), (5), (6) (b), (e)

DCF 250.09 (1) (b), (c)

DCF 250.095

DCF 250.11 (2) (g), (h), (3) (c), (4) (a), (5) (b), (8) (a), (11) (a)

DCF 250 Appendices A, E

Ch. DCF 251

DCF 251.01

DCF 251.03 (4g), (8r), (11), (11g) (intro.), (d), (13m), (14r) (b) to (d), (28m), (29g), (34)

DCF 251.04 (1) (a), (2) (f), (h), (i), (k), (L), (n) to (p), (3) (intro.), (a), (c), (g), (j), (m), (n), (5) (a), (6) (a), (b)

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Editorial Corrections

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

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NR 469.077 (intro.)

NR 469.08 (1) (intro.)

Sections Affected by Corrections Not Published

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

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

Location of invalid cross-reference	Invalid cross-reference	Correction
Comm 150.04 (2) (f)	ch. HFS 83	ch. DHS 83
DOC 346.33 (1)	HFS 5.07 (1)	DHS 5.07 (1)
DOC 346.39 (2) (a)	HFS 145.03 (4)	DHS 145.03 (4)
DOC 398.04 (4) (c) 1. c.	ch. HFS 61	ch. DHS 61
HA 3.12 (1)	DWD 12.22 (2) (b) or (c)	DCF 101.22 (2) (b) or (c)
HEA 10.04 (4)	ch. HFS 55	ch. DCF 252
MPSW 1.09 (1) (b) and (c)	ch. HFS 75 HFS 75.02 (84)	ch. DHS 75 DHS 75.02 (84)
MPSW 1.09 (4) (a) 1.	HFS 75.02 (11)	DHS 75.02 (11)
NR 679.01 (intro.)	Comm 10.01	Comm 10.050
NR 679.01(1)	Comm 10.01	Comm 10.050 (122)
Phar 7.04 (1) (d)	HFS 83.33 (3) (b) 2.	DHS 83.33 (3) (b) 2.
PI 16.02 (2)	ch. HFS 45 or 46	ch. DCF 250 or 251
PI 34.34 (3) (a) 4. b. and (5) (c)	ch. HFS 77	ch. DHS 77
RL 161.01 (1) and (4)	ch. HFS 75	ch. DHS 75
RL 161.01 (4)	HFS 75.02 (11) (d)	DHS 75.02 (11) (d)
RL 162.02 (5)	ch. HFS 75 HFS 75.02 (11) (d)	ch. DHS 75 DHS 75.02 (11) (d)
Tax 14.03 (4) (b) 3. f.	HFS 50.03 (1) (b)	DCF 50.03 (1) (b)
Trans 107.02 (2), 107.07 (1)	ch. HFS 62	ch. DHS 62
Trans 311.10 (1) (a)	343.305 (10) (b) 3.	343.305 (6) (b) 3.

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 270. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff on National Pearl Harbor Remembrance Day.

Executive Order 271. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Fire Lieutenant Rick Borkin of the Thiensville Fire Department.

Public Notices

Agriculture, Trade and Consumer Protection

Notice of Dollar Amount Adjustments for Repair Charges Subject to Mechanic's Liens

Under Wis. Stat. Section 779.41(1m), the Department is required to annually adjust the dollar amounts identified under Section 779.41 sub. (1) (intro.), (a), (b) and (c) 1. to 4. by the annual change in the consumer price index, all items, U.S. city average, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor, and publish the adjusted figures.

The Department has determined that current dollar amounts specified under Wis. Stats. Section 779.41 sub. (1) (intro), (a), (b) and (c) 1. to 4 shall be increased by 2.8%, according to the prior year annual change in the consumer price index.

The dollar amount contained in Wis. Stats. Section 779.41(1)(intro.), is adjusted to \$2,020. The dollar amounts contained in Wis. Stats. Section 779.41(1) (a), (b), and (c) 1.to 4 are adjusted to the following dollar amounts:

- (a) A trailer or semitrailer designed for use with a road tractor for charges in excess of \$6,055.
- (b) Road machinery, including mobile cranes and trench hoes, farm tractors, machines of husbandry, or off-highway construction vehicles and equipment for charges in excess of \$10,075.
- (c) A motor vehicle not included under par. (a) or (b) with a manufacturer's gross weight rating, including, with respect to road tractors, a manufacturer's gross weight rating for the combined carrying capacity of the tractor and trailer, of:
 - 1. More than 10,000 and less than 20,000 pounds, for charges in excess of \$4,030.
 - 2. 20,000 pounds or more, but less than 40,000 pounds, for charges in excess of \$7,960.
 - 3. 40,000 pounds or more, but less than 60,000 pounds, for charges in excess of \$13,000.
 - 4. 60,000 pounds or more, for charges in excess of \$15,655.

These revised dollar amounts under the mechanic's lien law shall apply to work commenced on or after January 1, 2009 for which a lien is claimed. These revised dollar amounts shall remain in effect until the first day of the first month following publication of new adjusted dollar amounts in the *Wisconsin Administrative Register*.

Contact Information:

Paul Dingee, Section Chief
Trade Practices Bureau
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4925

Financial Institutions — Banking

Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts for 2009

Under Section 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association, or mortgage banker, which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance, shall pay interest on the outstanding principal of the escrow.

Section 138.052 (5) (am) 2., Stats., directs the division of banking to determine annually the required interest rate. The rate is based on the average of interest rates paid on regular passbook deposit accounts by institutions under the division of banking's or office of credit unions' jurisdiction.

The Department of Financial Institutions, Division of Banking, has calculated the interest rate required to be paid on escrow accounts under Section 138.052 (5), Stats., to be **0.75%** for 2009. This interest rate shall remain in effect through December 31, 2009.

Contact Information:

Mr. Michael J. Mach, Administrator
Department of Financial Institutions
Division of Banking
Telephone (608) 261-7578

Health Services

Medical Assistance Reimbursement of Hospitals

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

The Department is proposing to establish inpatient hospital pay for performance measures and associated payment rates. In addition, the Department is proposing to establish hospital reimbursement rates specific to the BadgerCare Plus Core Plan benefit for both inpatient and outpatient services.

There is no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remain the same. The effective date for these proposed changes will be January 1, 2009 with rate adjustments impacting all SFY 2009 claims.

The establishment of pay for performance measures is projected to increase expenditures \$5,000,000 all funds in state fiscal year 2009, composed of \$2,100,000 general purpose revenue (GPR) and \$2,900,000 federal funds (FED). It is projected to have the same impact in SFY 2010.

The establishment of hospital reimbursement rates specific to the BadgerCare Plus Core Plan benefit is projected to have no fiscal impact.

Copies of the Proposed Changes:

Copies of the proposed changes will be sent to every county social services or human service department main office where they will be available for public review. For more information, interested persons may fax or write to:

Bureau of Fiscal Management
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309
Fax: (608) 266-1096

Written Comments:

Written comments on the proposed changes are welcome and should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. at:

Division of Health Care Access and Accountability
Room 350, State Office Building
One West Wilson Street
Madison, WI