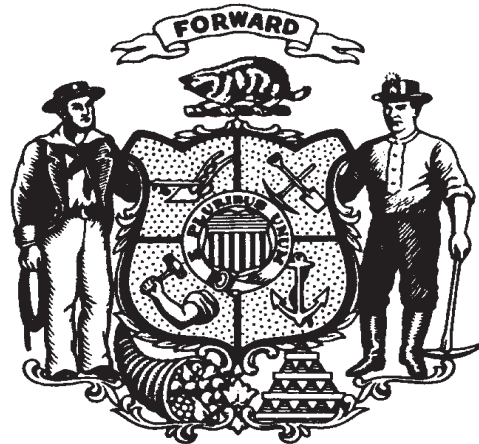


Wisconsin Administrative Register

No. 556



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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.

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, 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.

Agriculture, Trade and Consumer Protection

Rules adopted revising **ch. ATCP 77**, relating to certification of drug residue screening laboratories and approval of laboratory analysts to perform drug residue screening tests on milk.

Finding of emergency

The Department of Agriculture, Trade and Consumer Protection (“department”) finds that an emergency exists and that the following emergency rule is necessary to protect the public welfare. This emergency rule will bring Wisconsin into compliance with federal requirements. Wisconsin must comply with the federal requirements in order for Wisconsin dairy plants to continue shipping milk in interstate commerce. Interstate milk shipments are critical for the state’s dairy industry, and for the overall economy and well being of the state. The facts constituting the emergency are as follows:

(1) Grade A milk shipments are governed by the Interstate Pasteurized Milk Ordinance (PMO), jointly administered by the United States Food and Drug Administration (FDA) and the National Conference of Interstate Milk Shippers (representing participating states). In order for Wisconsin dairy plants to ship milk in interstate, Wisconsin must comply with the PMO and FDA mandates related to the PMO. Under s. 97.24, Stats., the Wisconsin Legislature has directed the department to adopt rules that conform to the PMO.

(2) Under the PMO and current state rules, all raw milk received by a dairy plant must be tested for certain drug residues (antibiotics from the penicillin family of drugs).

(3) FDA approves tests used for drug residue testing. There are 15 different tests that are approved for use. Some of these tests use a mechanical reader that determines the test result and then records it on a printer tape or directly to a computer. But other approved tests are “visually read”, and involve no mechanical reader. In these tests, an individual analyst

interprets a color change to determine whether drug residues are present.

(4) The department currently certifies laboratories and analysts that conduct confirmatory drug residue tests on raw milk samples. The department certifies these laboratories and analysts under ch. ATCP 77, Wis. Adm. Code. The department does not currently certify laboratories or analysts that perform only preliminary screening tests for drug residues, although it does provide training. Some preliminary screening tests use mechanical readers, while others are “visually read.”

(5) On July 2, 2001, FDA issued a new directive requiring states to approve laboratories that conduct screening tests (not just confirmatory tests) for drug residues in milk. A state must conduct an on–site evaluation before approving a laboratory or analyst to conduct “visual read” screening tests. According to the FDA, the department must complete its evaluations and issue its approvals by March 1, 2002. FDA may de–certify Wisconsin milk shippers if the department fails to carry out this directive, or if milk shipments are not tested by approved laboratories and analysts. De–certification could prevent the movement of Wisconsin milk in interstate commerce.

(6) In order to ensure the continued movement of Wisconsin milk in interstate commerce, the department must adopt rules expanding the current lab certification program under ch. ATCP 77, Wis. Adm. Code. The rules will require certification of laboratories conducting drug residue screening tests. The rules will also require on–site evaluation and approval of individual analysts conducting “visual read” screening tests. The rules will create new lab certification fees to pay for the expanded program, including the cost to perform the required on–site evaluations. The department must adopt these rules as soon as possible, in order to complete the required evaluations and issue the required approvals by March 1, 2002.

(7) The department cannot create this new program, by normal rulemaking procedures, in time to meet the March 1, 2002 deadline. The department is therefore adopting this temporary emergency rule under s. 227.24, Stats., pending the adoption of “permanent” rules by normal procedures. This emergency rule is needed to ensure the continued movement of Wisconsin milk in interstate commerce, and to prevent the economic disruption that would occur if that movement were interrupted.

Publication Date:	November 15, 2001
Effective Date:	November 15, 2001
Expiration Date:	April 14, 2002
Hearing Dates:	November 29, December 4, 5 & 6, 2001

Commerce (2)

(Financial Assistance for Businesses and Communities) (Chs. Comm 105–128)

1. Rules adopted revising **ch. Comm 110** relating to brownfields redevelopment grants.

Finding of emergency

The Department of Commerce finds that an emergency exists and that adoption of the rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under section 3628 of 2001 Wis. Act 16, the Department must begin

accepting applications from trustees and nonprofit organizations, for brownfields redevelopment grants. And, under section 3630 of the Act, the Department must begin disallowing use of the grant funds to pay either delinquent real estate taxes or lien claims of the Department of Natural Resources or the federal Environmental Protection Agency.

The Department's rules for administering the brownfields grant program are currently contained in ch. Comm 110 Wis. Adm. Code. These current rules do not recognize trustees and nonprofit organizations as eligible applicants, and do not include disallowing grant funds for payments on either back taxes, or on state or federal lien claims.

In November, the Department expects to begin promulgating permanent rules for making ch. Comm 110 consistent with Act 16. Due to the mandatory rulemaking procedures under ch. 227, Stats., the permanent rules are not expected to become effective until July 1, 2002. In order to comply with Act 16 by accepting applications and issuing grants for trustees and nonprofit organizations prior to then, emergency rules reflecting these changes are needed, as included herein. These emergency rules also address the above disallowance for grant proceeds, and include some minor updating of the ch. Comm 110 criteria for submitting grant applications and for filing subsequent financial and program reports.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Publication Date: October 27, 2001
Effective Date: October 27, 2001
Expiration Date: March 26, 2002
Hearing Date: January 11, 2002
Extension Through: May 24, 2002

2. Rules adopted creating **ch. Comm 107**, relating to Wisconsin technology zone program.

Finding of emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

Facts constituting the emergency are as follows:

- In accordance with s. 560.02 (4), Stats., the department of Commerce has the responsibility to promulgate rules to provide for the attraction, promotion and expansion of high–technology business in the state.

- Section 560.96, Stats., makes available certain tax benefits for certified businesses within the 8 designated technology zones. Tax benefits are available to certified businesses if their tax year begins on or after January 1, 2002.

- In response to a downturn in the economy and recent economic forecasts, Governor McCallum has prioritized the need to promulgate these rules as part of his economic stimulus package.

- The technology zone program will address several action items identified by the 2000 Wisconsin Economic Summit to ensure Wisconsin's short– and long–term economic vitality and success, including:

1. Combating the state's 'brain drain' by increasing high tech jobs.
2. Linking Wisconsin's research expertise with Wisconsin firms to grow clusters of high–tech jobs.
3. Linking economic strategies across regions for power through collaboration.

- This emergency rule is being created in order that the process of designating the 8 technology zones be commenced as soon as possible and that such eligible businesses may become certified and participate in the tax benefits through the Wisconsin Technology Zone Program.

Publication Date: December 5, 2001
Effective Date: December 5, 2001
Expiration Date: May 4, 2002
Hearing Date: January 11, 2002

Financial Institutions – Banking

A rule was adopted creating **s. DFI–Bkg 80.90**, relating to registration fees under the Wisconsin Consumer Act.

Finding of emergency

2001 Wis. Act 16 authorizes the Department of Financial Institutions to adopt rules pertaining to registration fees under the Wisconsin Consumer Act. The proposed rule revises the formula for calculating these fees. Without this rule, the department is unable to effectuate the legislature's requirement that registrations be completed by February 28, 2002.

Publication Date: December 3, 2001
Effective Date: December 3, 2001
Expiration Date: May 2, 2002
Hearing Date: January 28, 2002

Health & Family Services

(Health, Chs. HFS 110—)

Rules adopted creating **s. HFS 119.07 (6m)**, relating to prescription drug coinsurance coverage.

Exemption from finding of emergency

These are emergency rules creating s. HFS 119.07 (6m), Wis. Admin. Code to establish for prescription drug coverage a drug benefit separate from the medical benefits for the Health Insurance Risk–Sharing Plan (HIRSP) as authorized by s. 149.14 (5) (e), Stats., as amended by 2001 Wisconsin Act 16, and s. 149.146 (2) (am) 5., Stats., as created by 2001 Wisconsin Act 16. Section 9123 (9w) of the Act authorizes the department to use the emergency rulemaking procedures under s. 227.24, Stats., to promulgate these rules, exempts the department from making a finding of emergency, and from providing evidence that promulgating these rules as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare.

The HIRSP Board of Governors on September 13, 2001, approved the coinsurance rate and out–of–pocket limits established in these rules, as required by s. 149.14 (5) (e) Stats., as amended by 2001 Wisconsin Act 16 and s. 149.146 (2) (am) 5, Stats., as created by 2001 Wisconsin Act 16.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk–Sharing Plan for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP health insurance coverage includes prescription drug coverage. Currently, two major issues affect HIRSP prescription drug coverage. The first issue is that pharmacies have difficulty determining the

financial liability of HIRSP policyholders. The second issue is that the current system of HIRSP reimbursement to policyholders for prescription drug costs is financially burdensome to HIRSP policyholders. To resolve these issues, the department proposes to implement effective January 1, 2002, new coinsurance provisions for HIRSP's drug benefit that will clarify the financial liability of HIRSP policyholders for covered prescription drug costs and eliminate the process of reimbursing policyholders for prescription drug expenses by establishing policyholders' minimum and maximum out-of-pocket costs for covered prescription drugs.

The proposed rules will affect approximately 12,000 HIRSP policyholders statewide.

Publication Date: December 20, 2001
Effective Date: January 1, 2002
Expiration Date: May 31, 2002
Hearing Date: January 29, 2002

Natural Resources

(Fish, Game, etc., Chs. NR 1–)

Rules adopted revising **ch. NR 20**, relating to sturgeon spearing on the Lake Winnebago system.

Finding of emergency

The department of natural resources finds that an emergency exists and the foregoing rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

Winter spear harvest of sturgeon has continued to exceed the total allowable harvest goals due to an increase in spearing pressure and the current format of the season, which allows continued spearing for 1 day following the announcement of the season closure (when 80% of the total allowable harvest is reached). Harvest on the final day of the 2001 season resulted in a final harvest that exceeded the total allowable harvest by 52%. An emergency order is needed to protect the sturgeon population by preventing continued overharvest of female sturgeon during the 2002 season while permanent rules are being developed. The early closure should reduce spearing effort by 40%, which should decrease the daily harvest and reduce the risk of exceeding the total allowable harvest on the final day of the season.

Publication Date: December 14, 2001
Effective Date: December 14, 2001
Expiration Date: May 13, 2002
Hearing Date: January 14, 2002

Pharmacy Examining Board

Rules adopted revising **chs. Phar 1 and 2**, relating to a pharmacy internship program.

Finding of emergency

2001 Wis. Act 16 creates and amends rules relating to a pharmacy internship program.

Section 3608L of Wis. Act 16, Wis. Stats. s. 450.045, which had previously authorized a Pharmacy Internship Board to implement and oversee the practice of pharmacy in this state by pharmacy interns prior to receiving licensure from the Pharmacy Examining Board.

Section 2154 of Wis. Act 16 mandates that effective December 31, 2001, the repeal of Wis. Stats. s. 450.045 becomes effective. As of December 31, 2001, there will currently be pharmacy interns still serving internships in this state and additional pharmacy students beginning January 1, 2001, who will seek to begin an internship program. However, no standards or oversight will be in place by administrative rule of the Pharmacy Examining Board which is now charged with authority for the pharmacy internship process.

The administrative rule-making process will not allow rules to be in place as of January 1, 2002, without the use of the emergency rule procedure. The emergency rule is needed therefore to effect a transfer of oversight from the extinguished Pharmacy Internship Board to the Pharmacy Examining Board as of January 1, 2001.

Publication Date: December 30, 2001
Effective Date: January 1, 2002
Expiration Date: May 31, 2002
Hearing Date: February 12, 2002

Public Instruction (2)

1. Rules adopted revising **ch. PI 35**, relating to the Milwaukee parental choice program.

Finding of emergency

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

In the past, private schools that intended to participate in the Milwaukee parental choice program were required to submit to the state superintendent a notice of intent to participate by May 1, 2001 Wis. Act 16 changed the submission date of the notice from May 1 to February 1. The rules allow a private school to choose from a variety of student application periods. The student application period chosen by the private school must be indicated on its notice. Because the notice is due at the department by February 1, emergency rules must be in place as soon as possible.

Publication Date: January 28, 2002
Effective Date: January 28, 2002
Expiration Date: June 27, 2002
Hearing Date: April 9, 2002

2. Rules adopted creating **ch. PI 27**, relating to the commencement of a school term.

Finding of emergency

Beginning in the 2002–2003 school year, school boards are required to start a school term on or after September 1 unless the board submits a request to the Department of Public Instruction stating the reasons it would like the school term to start earlier. The rules establish a procedure for school boards to use in requesting an earlier start date and gives examples of extraordinary reasons for granting such requests.

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

- School boards are attempting to establish school calendars for the 2002–2003 school year and desire to have

rules in place so proper procedures can be followed and requests can be approved or denied.

- School calendars are a mandatory subject of bargaining and more than 300 teacher contracts remain unsettled. Rules need to be in place so school calendars can be set and contracts can be ratified.

- Teacher contracts that have been settled and ratified prior to September 1, 2001, are listed in the rule as a reason school boards may begin the school term prior to September 1. Rules need to be in place so school boards and unions don't have to renegotiate these contracts.

Publication Date: March 13, 2002
Effective Date: March 13, 2002
Expiration Date: August 10, 2002
Hearing Date: April 26, 2002
[See Notice This Register]

Transportation

Rules adopted amending s. **Trans 102.15**, relating to the issuance of driver's licenses and identification cards.

Finding of emergency

This rule is adopted in response to the September 11, 2001, terrorist hijackings in the United States, and are intended to help uncover any possible terrorist attempting to obtain identification documents through the Wisconsin Department of Transportation. On November 21, 2001, the New York Times reported that to support their terrorism, terrorists finance applications for political asylum and thus implant terrorist cells in Western Europe. This rule change could interrupt terrorists who have applied for or received asylum in the United States and who attempt to obtain Wisconsin identification documents.

Because of the urgency of current government efforts directed at taking steps to interrupt terrorist workings, this order adopting an emergency rule shall take effect as provided below.

Publication Date: December 21, 2001
Effective Date: December 21, 2001
Expiration Date: May 20, 2002
Hearing Date: February 15, 2002

State Treasurer

Rules adopted creating **ch. Treas 1** relating to the Wisconsin College Savings Program Board.

Exemption from finding of emergency

Section 15 (1), 2001 Wis. Act 7 provides an exemption from a finding of emergency for the adoption of ch. Treas 1.

Analysis prepared by the Office of the State Treasurer

Statutory authority: Section 14.64 (2) (e), Stats., and section 15, 2001 Wis. Act 7.

Statutes interpreted: s. 14.64 *et seq.*, Stats.

The Wisconsin College Savings Program Board establishes a rule for the operation of the College Savings Program. The rule is designed to grant flexibility to program participants wherever possible, while enabling the State and

its private-sector partners to administer the program in a manner that protects the program's financial integrity and viability. Maintaining eligibility as a "qualified tuition program" pursuant to section 529 of the Internal Revenue Code [26 USC 529] is another primary objective. "529" programs are eligible for a number of federal tax benefits that are attractive to families saving for future college costs. Significant features of the rule are addressed below:

Sections Treas 1.03, 1.04 and 1.05 describe who may open an account and how to open an account. Section Treas 1.06 discusses designating a successor owner and describes how to change ownership of an account. Sections Treas 1.07 and 1.08 define the account beneficiary and how to change the beneficiary on an account.

Section Treas 1.09 details how to make contributions to an account, including minimum and maximum contribution limits, and how to "roll over" an account balance to another section 529 program. IRS requirements relating to investment direction are also detailed.

Sections Treas 1.11, 1.12 and 1.13 describe account withdrawals, distributions and refunds. Special circumstances are also provided for in these sections, such as the death or disability of the beneficiary or receipt of a scholarship by a beneficiary. Section Treas 1.14 sets forth conditions under which the Board may terminate an owner's account. Sections Treas 1.15 and 1.16 address related fees and penalties.

Publication Date: January 7, 2002
Effective Date: January 7, 2002
Expiration Date: June 6, 2002
Hearing Date: March 5, 2002

Volunteer Fire Fighter and Emergency Medical Technician Service Award Board

Rules adopted creating **ch. VFF-EMT 1**, relating to the length of service award program.

Exemption from finding of emergency

Section 10 (3) (a), 1999 Wis. Act 105.

Analysis prepared by the Department of Administration:

Statutory authority: ss. 16.004 (1) and 16.25 (2), (3), (4) and (5), Stats.

Statutes interpreted: s. 16.25 *et seq.*, Stats.

Pursuant to section 16.25 (2) through (5), Stats., the Volunteer Fire Fighter and Emergency Medical Technician Service Award Board ("Board") is required to establish by rule a program ("Length of Service Awards Program" or "Program") to provide length of service awards, as described in 26 USC 457 (e) (11), to volunteer firefighters ("VFF") and municipalities that operate volunteer fire departments or contract with volunteer fire companies, and to volunteer emergency medical technicians ("EMT"). To the extent permitted by federal law, the Program is to be designed to treat length of service awards as a tax-deferred benefit under the Internal Revenue Code. The rules are to include design features for the Program, the requirements for and the qualifications of private sector entities that are eligible to provide administrative services and investment plans under the Program, and an appeal. Significant features of the rule are addressed below:

Section VFF-EMT 1.04 describes eligibility requirements for municipalities wishing to participate in the program, such as adopting a resolution or ordinance authorizing

participation, developing standards for determining the service required of the individuals it sponsors in order to qualify for municipal contributions and providing for circumstances where municipalities wish to jointly operate, or contract with, the same volunteer fire department or volunteer fire company.

Section VFF–EMT 1.05 sets forth requirements and procedures for municipal contributions made on behalf of eligible volunteers, and for the state’s matching contribution (up to \$250 per eligible individual annually).

Section VFF–EMT 1.06 sets forth the parameters for municipal contributions for prior service rendered before the municipality began participating in the Program. The minimum contribution for prior service is set at \$100, and those contributions may spread over a number of years. A separate accounting is required for these prior service payments.

Section VFF–EMT 1.07 sets forth the Program’s vesting requirements and the various permutations possible between full and partial vesting periods and the minimum age requirement (age 60) for payout. Section VFF–EMT 1.07 (1) establishes that 20 years service is required to fully vest and, upon reaching age 60, the award must be paid. (This requirement insures that the benefit maintains its tax deferred status.) Section VFF–EMT 1.07 (2) provides that a fully vested individual age 60 or older may continue to provide service toward a new length of service award under a new account but, for IRS rule purposes, contributions must be paid immediately and cannot accumulate. Section VFF–EMT 1.07 (3) provides for partial vesting after 10 years’ service. Should the individual perform more than 10 but less than 20 years’ service, upon reaching age 60, he or she will receive only 50% of the net asset value of the benefit account for the first 10 years of service rendered, and an additional 5% for each year thereafter, up to 19 years. Section VFF–EMT 1.07 (7) allows an individual to provide simultaneous service to two or more separate municipalities but, in such cases, only one year of service credit may be earned.

Section VFF–EMT 1.09 details the notice and procedure for when a VFF–EMT ceases performing service for one participating municipality and begins performing service for another municipality, which utilizes a different program administrator or vendor. Such a transfer is allowed, but the account will be frozen and a new one started with the new program administrator. However, any accumulated years of credited service will continue to count toward the vesting requirements. Section VFF–EMT 1.10 allows for benefits to be received both upon disability, or to the beneficiaries upon death of the VFF–EMT.

Section VFF–EMT 1.12 sets forth minimum program administrator qualifications. These include five years of experience providing a length of service award program, adequate marketing and enrollment services capabilities, various accounting and record keeping procedures and abilities, membership in good standing in various organizations customary in the program administrator’s or investment manager’s industry that provides protection against loss, and overall financial strength.

Section VFF–EMT 1.13 provides for the administration of plans offered by a program administrator under a contract with the Board, and standard provisions to be included. These include compliance with all pertinent state and federal statutes, rules and regulations, mandatory full disclosure to the Board of all fees and commissions earned directly and indirectly on the operations of the program, audits, and data processing system failure and administrative service interruption contingency plans. Also important are the

required annual statements to participating municipalities and the individuals they sponsor, detailing all contributions made and the fees commissions, and charges paid that affect the individual’s account.

Section VFF–EMT 1.17 provides for a two–step appeals process in which a VFF–EMT may first protest service credit issues to the participating municipality, which may consult with the program administrator. Any decision of the municipality may be reviewed at the Board’s discretion. An individual who has a substantial interest affected by a Board decision may appeal directly in writing to the Board. All Board decisions are final.

Publication Date: September 21, 2001
Effective Date: September 21, 2001
Expiration Date: February 18, 2002
Hearing Date: December 27, 2001
Extension Through: April 18, 2002

Workforce Development (Prevailing Wage Rates, Chs. DWD 290–294)

Rules adopted revising **ch. DWD 290** and creating **ch. DWD 293**, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Finding of emergency

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

The Department of Workforce Development is acting under its statutory authority to adjust thresholds for the application of prevailing wage laws on state or local public works projects and the application of payment and performance assurance requirements for a public improvement or public work. The thresholds are adjusted in proportion to any change in the construction cost index since the statutes were effective or the last adjustment.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule–making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule–making process. The department is proceeding with this emergency rule to adjust the thresholds of the application of the prevailing wage rates to avoid imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. The department is proceeding with this emergency rule to adjust the thresholds of the application of the payment and performance assurance requirements in s. 779.14, Stats., to avoid imposing an additional administrative burden on contractors for the same reason. Adjusting the thresholds by emergency rule will also ensure that the adjustments are effective on a date certain that is prior to the time of year that the relevant determinations are generally made.

Publication Date: December 27, 2001
Effective Date: January 1, 2002
Expiration Date: May 31, 2002
Hearing Date: February 27, 2002

Scope statements

Commerce

Subject

The objective of the rule is to amend ch. Comm 2. The rule will address inconsistencies and administration problems that have been discovered since the complete update of ch. Comm 2. The rule will not involve a general fee increase in ch. Comm 2.

Policy analysis

Section 101.19, Stats., requires the Department to fix and collect fees by rule which shall, as closely as possible, equal the cost of providing services such as plan examination and inspections. The Department's fees for those services are contained in ch. Comm 2. Since the last revision to these fees went into effect on September 1, 2000, a number of inconsistencies and clarification issues have been discovered which have caused administration and enforcement problems that have resulted in the Department not being able to collect the required fees. If the inconsistencies and clarification issues in ch. Comm 2 are not addressed, there will continue to be problems with the administration of the chapter and the collection of the required fees.

Statutory authority

Section 101.19, Stats.

Staff time required

The Department estimates that it will take approximately 100 hours to develop this rule. This time includes drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Commerce

Subject

The purpose of ch. Comm 48 is to prescribe minimum product grade specifications for petroleum products, including motor fuels, that are sold in Wisconsin. These specifications are intended to follow generally accepted national standards to the maximum extent feasible.

The purpose of the rule revision is to codify recent changes in national consensus standards and USEPA regulations that effect petroleum product specifications.

Policy Analysis

No changes in policy that effect fees or tested products are currently being considered for this rule change. The changes are intended to reflect technical product specifications.

The only policy alternative identified would be to leave the code as is. This would result in the code growing progressively more out-of-step with national standards, federal regulations and petroleum industry practices.

Statutory authority

Oil Inspection – Ch. 168, Stats.

Staff time required

The rules will be developed with the assistance of an advisory committee with oversight by the department. Time will be spent forming the committee, meeting with the committee and department staff, and then drafting and processing the rule package through public hearings, legislative review and adoption. An estimate of the amount of time that state employees will spend to develop the rule is as follows:

Research and Committee meetings time	300 hours
Rule drafting time	80 hours
Rule promulgation time	<u>100 hours</u> 480 hours

Transportation

Subject

This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding 11 highway segments to the network. The actual segments being proposed are:

STH 54 from Port Edwards to Black River Falls
 STH 78 from STH 11 in Gratiot to the WI–IL Line
 STH 88 from STH 35 to CTH E
 STH 107 from STH 29 to STH 153
 STH 153 from STH 51 to STH 13
 CTH A from CTH E to Dorchester
 CTH B from STH 73 to STH 64
 CTH E from STH 29 to CTH O
 CTH E from STH 28 to STH 67
 CTH O from STH 64 to STH 13
 CTH S from STH 53 to STH 124

Policy Analysis

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to deal with changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a requests from Roehl Transport, Inc., and Marathon Cheese Corporation to add these highway segments.

Statutory authority

Section 348.07 (4), Stats.

Staff time required

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

Submittal of rules to legislative council clearinghouse

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

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On March 19, 2002, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 227.15, Stats.

The proposed rule–making order relates to the Telemarketing “No–Call” list.

Agency Procedure for Promulgation

Public hearings are scheduled for May 6, 7, 8, 9, 13 and 14, 2002.

Contact Person

Jim Rabbitt at 608–224–4965 or Dave Ghilardi at (608) 224–5030.

Corrections

Rule Submittal Date

On March 28, 2002, the Department of Corrections submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 227.16 (1), Stats.

The proposed rule–making order relates to complaint procedures.

Agency Procedure for Promulgation

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

Contact

The Division of Adult Institutions is primarily responsible for promulgation of the rule.

Employment Relations Commission

Rule Submittal Date

On March 20, 2002, the Wisconsin Employment Relations Commission submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 227.14 (4m), Stats.

The proposed rule–making order relates to the Wisconsin Employment Peace Act, Municipal Employment Relations Act and the State Employment Labor Relations Act.

Agency Procedure for Promulgation

A public hearing will be scheduled.

Contact Person

Peter G. Davis, General Counsel, (608) 266–1381.

Insurance

Rule Submittal Date

On March 18, 2002, the Office of the Commissioner of Insurance submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 227.14 and 227.15, Stats.

These changes will affect ss. Ins 17.01 (3), 17.25 (3), 17.28 (6) and 17.28 (6a), Wis. Adm. Code, relating to annual patients compensation fund and mediation fund fees for fiscal year beginning July 1, 2002.

Agency Procedure for Promulgation

The date for the public hearing is May 3, 2002.

Contact Person

A copy of the proposed rule may be obtained from the OCI internet Web sit at:

<http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance at (608) 264–8110. For additional information, please contact Alice M. Shuman–Johnson at (608) 266–9892 or 3–mail at Alice.Shuman–Johnson@oci.state.wi.us in the OCI Legal Unit.

Workforce Development

Rule Submittal Date

On March 29, 2002, the Department of Workforce Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 49.145 (2) (f) and 227.11 (2), Stats.

The proposed rules create ch. DWD 15, relating to child support cooperation for Wisconsin Works.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 1, 2002. The organizational unit responsible for the promulgation of the proposed rule is the DWD Division of Workforce Solutions.

Contact Person

Elaine Pridgen

Telephone: (608) 267–9403

Email: pridgel@dwd.state.wi.us

Workforce Development**Rule Submittal Date**

On March 29, 2002, the Department of Workforce Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 49.124 (1g) and 227.11 (2), Stats.

The proposed rules create ch. DWD 19, relating to child support cooperation for food stamps.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 1, 2002. The organizational unit responsible for the promulgation of the proposed rule is the DWD Division of Workforce Solutions.

Contact Person

Elaine Pridgen

Telephone: (608) 267-9403

Email: pridgel@dwd.state.wi.us

Rule–making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection [CR 02–036]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule to create ch. ATCP 127, relating to a telemarketing “no call” list. The department will hold twelve hearings at the time and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until May 30, 2002, for additional written comments.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, or by calling 1–800–422–7128. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **April 20, 2002**, by writing to Jim Rabbitt, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4965. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearings.

Twelve hearings are scheduled:

Monday, May 6, 2002, at 1:00 p.m. & 7:00 p.m.
Prairie Oaks State Office Building, Board Room
2811 Agriculture Drive
Madison, WI 53708
Handicapped accessible

Tuesday, May 7, 2002, at 1:00 p.m. and 6:30 p.m.
Havenwood State Forest
6141 N. Hopkins Street
Milwaukee, WI 53209
Handicapped accessible

Wednesday, May 8, 2002, at 2:00 p.m. and 7:00 p.m.
Wausau City Council Chambers
City Hall
407 Grant Street
Wausau, WI 54403
Handicapped accessible

Thursday, May 9, 2002, at 1:00 p.m. and 6:00 p.m.
Brown County Library, Central Library
515 Pine Street
Green Bay, WI 54301
Handicapped accessible

Monday, May 13, 2002, at 1:00 p.m. and 7:00 p.m.
Department of Agriculture, Trade and Consumer
Protection, Eau Claire Office
3610 Oakwood Hills Parkway

Eau Claire, WI 54701
Handicapped accessible

Tuesday, May 14, 2002, at 1:00 p.m. and 7:00 p.m.
LaCrosse City Council Chambers
400 LaCrosse Street
LaCrosse, WI 54699
Handicapped accessible

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

Statutory authority: ss. 100.20 (2) and 100.52

Statutes interpreted: ss. 100.20 and 100.52

Background

The Wisconsin department of agriculture, trade and consumer protection (DATCP) regulates unfair and deceptive business practices under s. 100.20, Stats. DATCP has adopted rules, under ch. ATCP 127, Wis. Adm. Code, to protect consumers against unfair telemarketing practices. The Legislature has also directed DATCP, under s. 100.52, Stats., to create a “no–call” list of consumers who do not wish to receive telemarketing calls.

Under s. 100.52, Stats., consumers may contact DATCP to sign up for the “no call” list. Telemarketers may not call consumers whose telephone numbers appear on the list. Telemarketers must register with DATCP and pay fees to finance the list compilation and distribution. On a regular periodic basis, DATCP must update the list and distribute it to registered telemarketers. DATCP must adopt rules to implement this program.

This rule creates a telemarketing “no–call” program, as directed by the Legislature. DATCP is adding this rule to DATCP’s current telemarketing rules under ch. ATCP 127, Wis. Adm. Code.

“Telephone Solicitations” Covered

This rule regulates “telephone solicitations” to persons located in this state, regardless of where the calls originate. A “telephone solicitation” means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services. “Telephone solicitation” does not include any of the following:

- A telephone call encouraging the call recipient to buy property, goods or services from a “nonprofit organization” solely for the benefit of that organization. A “nonprofit organization” means an organization described in section 501(c)(3), (4), (5) or (19) of the United States internal revenue code.

- A telephone call made by the sole individual proprietor of a business, encouraging the call recipient to buy property, goods or services sold by that business.

- A telephone call made in response to the call recipient’s request for that call.

- A telephone call made to a current client of the person selling the property, goods or services promoted by the telephone call.

- A telephone call made to a number listed in the current local business telephone directory.

Telemarketers Must Register

This rule requires telemarketers to register annually with DATCP. A registration expires on December 31 of each year. Under this rule:

- No person may employ or contract with any individual to make telephone solicitations to residential telephone customers unless that person is currently registered with DATCP.
- No individual may make a telephone solicitation to a residential telephone customer unless one of the following applies:
 - The individual is employed by, or acting as the contract agent of, a person currently registered with DATCP.
 - The individual is currently registered with DATCP.

Telemarketer Registration Form

To register with DATCP, a person must complete an annual registration form and pay annual fees. The registration form must include all the following:

- The registrant’s correct legal name, and all trade names under which the registrant does business.
- The registrant’s principal business address and telephone number. The business address shall include street address, zip code, state and nation.
- The registrant’s federal tax identification (FEIN) number.
- The name and address of the registrant’s registered agent in this state, if any.
- The name and address of a person who will accept service of process on behalf of the registrant, if other than a registered agent in this state.
- The name, address and telephone number of a person who may respond, on behalf of the registrant, to DATCP notices and inquiries.
- The number of telephone lines used, by individuals acting as employees or agents of the registrant, to make telephone solicitations. The registrant must provide the telephone number associated with each of these lines.
- The number of individuals who make telephone solicitations as employees or agents of the registrant. The registrant must provide the names of the individuals if DATCP requests those names.
- A statement indicating the form in which the registrant wishes to receive “no–call” lists. A registrant may receive “no–call” lists in one or more of the following forms:
 - By e–mail transmission to an e–mail address provided by the registrant.
 - As a compact disc, mailed to an address provided by the registrant.
 - In hard–copy printed form, mailed to an address provided by the registrant.

Telemarketer Registration Fees

A telemarketer registering with DATCP must pay the following annual fees:

- A basic annual registration fee of \$800 for the first year of registration, and \$600 for each year thereafter.
- A supplementary annual fee of \$100 for each telephone line used by the registrant (or the registrant’s employees or individual agents) to make telephone solicitations. This fee does not apply if the registrant uses fewer than 4 telephone lines.
- A supplementary annual fee of \$25 for each e–mail address to which the registrant would like DATCP to send the

“no–call” list. This fee does not apply if the registrant asks DATCP to send the “no–call” list to just one e–mail address.

- A supplementary annual fee of \$25 for each address to which the registrant would like DATCP to send the “no–call” list in compact disc form.
- A supplementary annual fee of \$1,000 for each address to which the registrant would like DATCP to send the “no–call” list in hard–copy print form.

The “No–Call” List

DATCP must compile a “no–call” list containing the telephone numbers and ZIP codes of residential telephone customers who sign up for the list. No person may make a telephone solicitation, either directly or through an employee or agent, to a residential customer whose telephone number appears on the current no–call list.

A residential telephone customer may contact DATCP by phone, or at DATCP’s website, to sign up for the “no–call” list. A customer’s caregiver may sign up on behalf of the customer. The customer or caregiver shall give DATCP all the following information:

- The customer’s telephone number including area code.
- The customer’s ZIP code.
- The customer’s name and address, if requested by DATCP. *DATCP will not include this information on the “no–call” list, but may request it for verification purposes.*
- The caregiver’s name and address, if a caregiver contacts DATCP on behalf of the customer. *DATCP will not include this information on the “no–call” list, but requires it for verification purposes.*

Distributing the List

DATCP must distribute the “no–call” list to each telemarketer who is currently registered with DATCP. DATCP must distribute the list in the manner specified by the registrant (assuming that the registrant pays the required fees for that method of delivery). A “no–call” list takes effect on a date specified by DATCP, not sooner than 10 days after DATCP distributes the list.

Updating the List

DATCP must compile and distribute an updated “no–call” list every 3 months. DATCP must distribute updated lists in the same manner as the initial list. DATCP must delete a residential telephone customer from the “no–call” list 2 years after that customer last signed up for inclusion on the list. A customer may renew a sign–up at any time.

No Unauthorized Release

A registered telemarketer may not redistribute any part of a “no–call” list to any other person, except that the registrant may redistribute the list to an individual making telephone solicitations as the registrant’s employee or agent. DATCP may not release a “no–call” list, or any information used to compile the list, except that:

- DATCP may release a “no–call” list to telemarketers currently registered with DATCP.
- DATCP may release a “no–call” list as necessary to enforce this rule, or to comply with a subpoena or judicial process, subject to such protective orders as may be appropriate.
- DATCP may release the “no–call” list to the federal trade commission or other federal agency maintaining a national “no–call” list.

Telephone solicitation practices

Telemarketers must comply with current DATCP telemarketing rules under ch. ATCP 127, Wis. Adm. Code. In addition, this rule prohibits telemarketers from doing any of the following:

- Making telephone solicitations to a residential telephone customer, unless the telemarketer is registered with DATCP or working for a registered telemarketer.

- Making a telephone solicitation to a residential telephone customer whose telephone number appears on the current “no call” list.

- Using an electronically prerecorded message in a telephone solicitation to a residential or nonresidential telephone customer without the prior consent of that telephone customer.

- Failing to disclose, at the request of a residential telephone customer receiving a telephone solicitation, the telemarketer’s Wisconsin registration number.

- Making a telephone solicitation to a nonresidential telephone customer (business) if that business has notified the telemarketer by mail that the business does not wish to receive telephone solicitations. A telemarketer must provide a business with the telemarketer’s mailing address within 10 days after the business requests it.

- Requiring, instructing or authorizing an employee or agent to make a telephone solicitation in violation of this rule, or facilitating a violation of this rule.

- Using caller–ID blocking when making a telephone solicitation.

Telemarketer Records

Under current DATCP telemarketing rules, telemarketers must keep certain records for at least 2 years and must make those records available to DATCP upon request. Among other things, a telemarketer must keep records related to individuals who make telephone solicitations as employees or agents of the telemarketer, including names, addresses, telephone numbers, job titles, and fictitious names if any (no 2 individuals may use the same fictitious name).

This rule requires telemarketers to comply with current record keeping requirements, and adds one new requirement. Under this rule, a telemarketer must record the time period during which an individual made telephone solicitations as the seller’s employee or agent.

Fiscal Estimate

This rule creates a telemarketing “no–call” program, as directed by the Legislature. DATCP is adding this rule to DATCP’s current telemarketing rules under ch. ATCP 127, Wis. Adm. Code. The legislation, passed as part of the budget bill, creates section 100.52 of the Wisconsin Statutes which directs DATCP to develop systems to register residential customers who do not wish to be called by telemarketers and, register telemarketers who wish to solicit Wisconsin residents. It also requires DATCP to investigate and seek penalties against violators most of whom are located outside of Wisconsin.

Currently, department rules, Chapter ATCP 127, Wis. Admin. Code, enacted in August 1999 prohibits a telemarketer from soliciting a consumer who has asked the telemarketer to place them on a “do not call” list. The rules also require a telemarketer to maintain systems for ensuring consumers on this list are not called. Under these new rules, DATCP will create a list and registered telemarketers will combine this list into their systems.

Based on experience, and the Department projects that a majority of Wisconsin households will register under this new law. Other states of equal population report nearly one million households are registered on their lists.

The Department assumes consumer registration will be made available through a toll–free telephone system as well

as on–line forms. Because of the magnitude of the project, the Department is preparing requests for bids from outside sources. This estimate is based on an assumption that those bids will result in costs of approximately \$400,000 annually.

The Department estimates a workload of 5,000 hours annually to intake and process consumer complaints administer the contracts with the vender to create and distribute the lists. To accomplish this, the Department will require 2.5 positions.

Complaints regarding telemarketing will double to approximately 1000 per year. The Department estimates 100 complaints per year will require assignment to investigative staff for detailed investigation. Typically, these investigations will involve multiple victims and multiple jurisdictions. The Department will require 2.0 FTE investigators for enforcement activities. The Department estimates the additional annual workload to oversee and administer the program and enforce the law will also require 1.0 FTE consumer complaint supervisor.

Based on these assumptions, the department estimates there will be a one–time cost of \$53,400. Ongoing annual costs of \$658,600 would be offset through license fees.

The Department is authorized to set initial registration fees to generate the funding necessary to create the list and renewal fees necessary to administer this program. The Department is proposing an initial registration fee of \$800 plus a supplemental fee of \$100 per each phone line if a business uses more than 3 lines to telemarket. The Department proposes a renewal fee of \$600 plus a supplemental fee of \$100 per each phone line if a business uses more than 3 lines to telemarket.

The Department assumes 375 (62%) telemarketers to register in year one, which will generate \$564,000. An additional 225 new registrations as well as renewals in year two will generate \$731,000. Year three will stabilize at 600 renewals and generate \$677,000. In the first two years the program will create a deficit of \$21,000. In year three the registration fees should begin to generate a small surplus, and if this continues through year 4, the department will have a surplus of \$17,000 which it is assumed will be consumed by inflationary pressures.

Long – Range Fiscal Implications

Registration fees paid by telemarketing firms will offset the annual cost. The Department assumes the annual renewal to generate \$664,000 to offset estimated costs of \$658,600. If these estimates generate a small surplus, the Department proposes to hold the surplus to offset future registration price increases.

Initial Regulatory Flexibility Analysis

Rule Description

This rule regulates “telephone solicitations” to persons located in this state, regardless of where the calls originate. This rule requires telemarketers to register annually with DATCP. Registered telemarketers will be provided a list that is compiled by DATCP containing the telephone numbers of consumers who do not want to be solicited by telephone. Telemarketers will be prohibited from soliciting by phone any consumer who is on the “no call” list.

“Telephone Solicitations” Covered

A “telephone solicitation” means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services. “Telephone solicitation” does not include any of the following:

- A telephone call encouraging the call recipient to buy property, goods or services from a “nonprofit organization” solely for the benefit of that organization.

- A telephone call made in response to the call recipient’s request for that call.

- A telephone call made to a current client of the person selling the property, goods or services promoted by the telephone call.

- A telephone call made to a number listed in the current local business telephone directory.

Telemarketers Must Register

Registration expires on December 31 of each year. Under this rule:

- No person may employ or contract with any individual to make telephone solicitations to residential telephone customers unless that person is currently registered with DATCP.

- No individual may make a telephone solicitation to a residential telephone customer unless one of the following applies:

- The individual is employed by, or acting as the contract agent of, a person currently registered with DATCP.

- The individual is currently registered with DATCP.

Telemarketer Registration Form

To register with DATCP, a person must complete an annual registration form and pay annual fees. The registration form must include all the following:

- The registrant’s correct legal name, and all trade names under which the registrant does business.

- The registrant’s principal business address and telephone number. The business address must include street address, zip code, state and nation.

- The registrant’s federal tax identification (FEIN) number.

- The name and address of the registrant’s registered agent in this state, if any.

- The name and address of a person who will accept service of process on behalf of the registrant, if other than a registered agent in this state.

- The name, address and telephone number of a person who may respond, on behalf of the registrant, to DATCP notices and inquiries.

- The number of telephone lines used, by individuals acting as employees or agents of the registrant, to make telephone solicitations. The registrant must provide the telephone number associated with each of these lines.

- The number of individuals who make telephone solicitations as employees or agents of the registrant. The registrant must provide the names of the individuals if DATCP requests those names.

- A statement indicating the form in which the registrant wishes to receive “no-call” lists. A registrant may receive “no-call” lists in one or more of the following forms:

- By e-mail transmission to an e-mail address provided by the registrant.

- As a compact disc, mailed to an address provided by the registrant.

- In hard-copy printed form, mailed to an address provided by the registrant.

Telemarketer Registration Fees

A telemarketer registering with DATCP must pay the following annual fees:

- A basic annual registration fee of \$800 for the first year of registration, and \$600 for each year thereafter.

- A supplementary fee for each telephone line used by the registrant (or the registrant’s employees or individual agents) to make telephone solicitations. The fee amount is \$100 per telephone line if the registrant (and the registrant’s employees and agents) use more than 3 lines.

- A supplementary fee of \$25 for each additional e-mail address to which the registrant would like DATCP to send the “no-call” list (if more than one e-mail address).

- A supplementary fee of \$25 for each additional copy of the list which the registrant would like DATCP to send in compact disc form.

- A supplementary fee of \$1,000 for each address to which the registrant would like DATCP to send the “no-call” list in hard-copy print form.

Updating the List

DATCP must compile and distribute an updated “no-call” list every 3 months. DATCP must distribute updated lists in the same manner as the initial list. DATCP must delete a residential telephone customer from the “no-call” list 2 years after that customer last signed up for inclusion on the list. A customer may renew at any time.

Small Businesses Affected by this Rule

This rule affects businesses that solicit residential consumers for the purpose of encouraging the call recipient to buy property, goods or services. The rule will effect “professional” telemarketers who solicit on behalf of others as well as businesses that solicit on their own behalf. The bureau assumes approximately 600 businesses that offer to sell a wide variety of consumer products will be required to register. Many of these businesses are “small businesses” as defined in s. 227.114 (1) (a), Stats.

Effects on Small Business

This rule will have an impact on small business. Under current law, all businesses that telemarket must keep a no call list consisting of persons who inform the business that they do not want to be called again. Under this rule the business will have to add the telephone numbers compiled by the State to their no call list. The department will provide the consumer information in a format that is readable by all computer systems. Any Wisconsin business that telemarkets into one of the more than 20 States that currently have do not call laws will already have already implemented systems to fulfill the requirements contained in this rule. Others may have a one-time cost of reprogramming their systems. This one-time cost is expected to have a slight impact on small business.

The cost of administering the program is mandated by statute to be funded through registration fees for businesses that telemarket. The fees are based on the number of lines that are used to solicit so a small business will pay less than a large telemarketer with multiple lines.

Steps to Assist Small Business

The registration fees are based on the number of lines a telemarketer uses to solicit and the first three telephone lines are included under the base fee. The rules also have exceptions for businesses calling their own customers or responding to a request by a consumer for a call. Both of these exceptions should assist small business.

Conclusion

This rule will have a minor impact on small business. Small business will have one-time costs to upgrade existing systems to accept the lists and combine them with current lists. The long term impact of not telemarketing persons who do not wish to be telemarketed are expected to be minor. This rule will have the long term cost of annual fees for registration. The department has taken reasonable steps to

share the costs of the program equitably among those who are regulated.

Notice of Hearing

Hearings and Appeals [CR 02–024]

NOTICE IS HEREBY GIVEN that pursuant to s. 15.03, Stats., the Division of Hearings and Appeals will hold a public hearing to consider the repeal and recreation of ch. HA 1 relating to the practice and procedure for contested cases conducted by the Division.

Hearing Information

The hearing will be held as follows:

April 26, 2002 Division of Hearings and Appeals
Friday Suite 201
9:30 a.m. 5005 University Avenue
Madison, WI

(Corner of University Ave. & Whitney Way)

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available at the east end of the building.

The public record on this proposed rule making will be held open until close of business May 3, 2002 to permit the submission of written comments from persons unable to attend the public hearing or those who wish to supplement testimony offered at the hearing. Any such comments should be sent to Louis Dunlap, Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707–7875.

Analysis Prepared by the Division of Hearings and Appeals

These proposed rules describe the requirements and process for those individuals and organizations bringing contested case proceedings before the Division of Hearings and Appeals.

Before government reorganization in 1996, the office of administrative hearings located in the department of health and social services, in addition to “fair hearings” for individual recipients of various benefit programs, conducted a variety of contested case proceedings under Wis. Stat. ch. 227 relating to actions taken by the department concerning licensure, Medicaid funds and many other topics. The division of hearings and appeals, in addition to probation and parole hearings, also was conducting contested case proceedings for the department of natural resources and other state agencies in accordance with its own rule, ch. HA 1. In the course of reorganization, the office of administrative hearings merged with the division of hearings and appeals and the combined offices have since added more types of proceedings for other state departments. These changes, as well as the fact that ch. HA 1 was outdated, create the need for a revised and expanded rule governing the hearing process for these types of cases.

The proposed rule:

- Describes the process, requirements and time limits for requesting a hearing.
- Describes the process for service of documents.
- Describes the requirements for notices of hearing.
- Defines the powers of the administrative law judge who conducts the hearing, the manner in which a hearing will be conducted and the consequences of failure to appear at a scheduled hearing.
- Defines the limits on preservation of evidence and discovery.

- Defines the application of the rules of evidence.
- Defines the circumstances under which transcripts may be made for parties.
- Describes the form of hearing decisions, defines the burden of proof, and the process for the issuance of proposed decisions.
- Provides the requirements for decisions regarding further review or appeal of a decision.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

There is no fiscal effect, as these rules regulate a process already performed.

Contact Person

To find out more about the hearing or to request a copy of the proposed rules, write or telephone:

Louis Dunlap
Division of Hearings and Appeals
5005 University Avenue, Suite 201
P.O. Box 7875
Madison, WI 53707–7875
(608) 267–7376 or, if you are hearing impaired, 264–9853.

Notice of Hearing

Insurance [CR 02–035]

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the proposed rulemaking order affecting ss. Ins 17.01 (3), 17.25 (3) (d), 17.28 (6) and 17.28 (6a), Wis. Adm. Code, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2002.

Hearing Information

Date: **Friday, May 3, 2002**
Time: 10:00 a.m., or as soon thereafter as the matter may be reached
Place: Room 23, OCI,
121 East Wilson Street, Madison, WI

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI by 4:30p.m. the date of the hearing. Written comments should be addressed to: Alice M. Shuman–Johnson, OCI, PO Box 7873, Madison WI 53707.

Analysis prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 601.41 (3), 655.004, 655.27 (3) (b), and 655.61, Stats.

Statute interpreted: s. 655.27 (3), Stats.

The commissioner of insurance, with the approval of the board of governors (board) of the patients compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund. This rule establishes those fees for the fiscal year beginning July 1, 2002. These fees represent a 5% decrease compared with fees paid for the 2001–02 fiscal year. The board approved these fees at its meeting on February 27, 2002, based on the recommendation of the board’s actuarial and underwriting committee.

The board is also required to promulgate by rule the annual fees for the operation of the patients compensation mediation system, based on the recommendation of the director of state courts. This rule implements the funding level recommendation of the board's actuarial and underwriting committee by establishing mediation panel fees for the next fiscal year at \$ 19.00 for physicians and \$1.00 per occupied bed for hospitals, representing a 50% decrease from 2001-02 fiscal year mediation panel fees.

This rule also amends s. Ins. 17.25 (3) (d) to reflect the increased primary limit of 1million/3million for occurrences on and after July 1, 1997 for the Wisconsin health care liability plan as required by s. 655.23 (4) (b), Stats.

Initial Regulatory Flexibility Analysis

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

Fiscal estimate

The Patients Compensation Fund (Fund) is a segregated fund. Annual Fund fees are established to become effective each July 1, based on actuarial estimates of the Fund's needs for payment of medical malpractice claims. The proposed fees were approved by the Fund's Board of Governors at its February 27, 2002 meeting.

There is no effect on GPR.

Estimated revenue from fees, for fiscal year 2002-2003, is approximately \$27.4 million, which represents a 5% decrease to fiscal year, 2001-2002 fee revenue.

Copies of Rule and Contact Person

A copy of the full text of the proposed rule changes and fiscal estimate may be obtained from the OCI internet WEB site at <http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting:

Inger Williams, Services Section
Office of the Commissioner of Insurance
(608) 264-8110
or at
121 East Wilson Street
PO Box 7873, Madison WI 53707-7873

Notice of Hearing

Public Instruction [CR 01-130]

NOTICE IS HEREBY GIVEN That pursuant to ss. 118.045 (3) and 227.11 (2) (a), Stats., and interpreting s. 118.045, Stats., the Department of Public Instruction will hold a public hearing as follows to consider emergency rules, ch. PI 27, relating to the commencement of a school term.

The hearing will be held as follows:

Date and Time	Location
April 26, 2002	Madison
3:00 - 4:30 p.m.	GEF 3 Building 125 South Webster St. Room 349

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Lori Slauson, at (608) 267-9127 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

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

Lori Slauson, Administrative Rules and Federal Grants Coordinator

Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above email or street address no later than May 3, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

2001 Wis. Act 16 requires school boards to start a school term after September 1 unless a school board submits a request to the Department of Public Instruction stating the reasons it would like the school term to start earlier. The department may grant a request only if it determines there are extraordinary reasons for granting it.

The department is required to promulgate rules to implement and administer this provision. The rules establish a procedure for school boards to use in requesting an earlier start date and gives examples of extraordinary reasons for granting such requests.

Fiscal Estimate

The proposed creation of ch. PI 27, rules relating to the commencement of a school term, is a result of statutory changes made under 2001 Wis. Act 16. The rules will not have a fiscal effect separate from the statutory changes made under the Act. The Act modified s. 118.045, Stats., requiring school boards to start a school term after September 1 unless a school board submits a request to the department stating the reasons it would like the school term to start earlier. The department may grant a request only if it determines there are extraordinary reasons for granting it.

By law, school districts must provide 180 days of instruction. By starting school later, school districts will likely have to make up days by having shorter winter or spring breaks, or by extending the school year later into summer. If school is conducted during Thanksgiving or winter break when schools would normally be vacant, heating and electrical costs may increase. These costs are indeterminate.

Additionally, current law requires school districts to provide transportation for pupils in private schools. If private schools choose to begin the school year prior to September 1, transportation costs may increase if school districts are required to run additional bus lines or otherwise accommodate the transportation needs of private school pupils when public school is not in session. For example, one public school district has 40 percent of its elementary student population in private or parochial schools. The business manager of the public district estimated that if the private schools chose to start school prior to September 1, it would cost the school district an additional \$5,000 to \$6,000 per day in transportation costs. The private schools started on August 26 in 2001. If the new legislation would have been in effect this year, it would have cost the public school district \$25,000 to \$30,000. It should be noted that excessive private school transportation costs are listed in the rule as an extraordinary reason to allow a school to begin a school term prior to September 1.

It is assumed this rule will have no state fiscal effect. These rules may affect small businesses. However, any costs or benefits will vary on a case-by-case basis depending on when such businesses need to employ pupils (at the beginning or end of summer).

Notice of Hearing

Public Instruction

[CR 02–032]

NOTICE IS HEREBY GIVEN That pursuant to ss. 118.30 (3) (b) and 227.11 (2) (a), Stats., and interpreting s. 118.30 (3), Stats., the Department of Public Instruction will hold a public hearing as follows to consider the creation of ch. PI 28, relating to providing access to the 4th, 8th, and 10th grade Knowledge and Concepts Examinations and the High School Graduation Test.

The hearing will be held as follows:

Date and Time	Location
April 26, 2002 3:00 – 4:30 p.m.	Madison GEF 3 Building 125 South Webster St. Room 349

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Lori Slauson, at (608) 267–9127 or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

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

Lori Slauson, Administrative Rules and Federal Grants Coordinator

Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above email or street address no later than May 3, 2002, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

Since 1992, when the knowledge and concepts examinations were first instituted in Wisconsin, the state superintendent has been required to make available, upon request, within 90 days of the date of administration, any of the required pupil assessments under s. 118.30, Stats. This requirement also applied to the high school graduation test when it was added in 1997. The department has provided guidance on proper test use and review in a document titled, “DPI Guidelines for Appropriate Testing Procedures.”

2001 Wis. Act 16 created s. 118.30 (3) (b), Stats., requiring the state superintendent to promulgate rules establishing procedures to allow a person to view these tests. The proposed rules codify the requirements in the guidelines. Specifically, the rules:

Do not allow a person to review a test that is being developed or validated.

Require a person to submit a written request to the state superintendent and the school board within 90 days after the date of administration of the test.

Require the school board to file a confirmation of destruction/security agreement with the test publisher before allowing a test to be reviewed.

Require the school board or the department to ensure that the individual making the request signs a confidentiality agreement.

Require the school board or the department to ensure the test viewer is accompanied by a qualified staff member who is aware of the confidentiality requirements associated with the test.

Fiscal Estimate

The rules establish requirements for school boards providing access to the 4th, 8th, and 10th grade Knowledge and Concepts Examinations and the High School Graduation Test. The rules also establish procedures for individuals to follow in requesting these tests for review.

Requiring test access originated with the enactment of 1991 Wis. Act 269; however, rules relating to test access were not required to be developed. Instead, the department developed *DPI Guidelines for Appropriate Testing Procedures*. 2001 Wisconsin Act 16 required the department to promulgate rules relating to test access. The rule codifies the requirements in the guidelines.

Because the requirements specified in the guidelines have been in place for quite some time, the rules codifying these requirements are not anticipated to have a local or state fiscal effect separate from current practice.

Notice of Hearing

Workforce Development

Workforce Solutions, Chs. DWD 11–59

[CR 02–039]

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.145 (2) (f) and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider ch. DWD 15, relating to child support cooperation for Wisconsin works.

Hearing Information

May 1, 2002 GEF 1 Building, Room B103
Wednesday 201 E. Washington Avenue
1:00 p.m. Madison

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267–9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: ss. 49.145 (2) (f), and 227.11, Stats.
Statute interpreted: s. 49.145 (2) (f), Stats.

Relevant federal law: 42 USC 654(29); 45 CFR 264.30 and 264.31

Section 49.145 (2) (f), Stats., requires that every parent in a Wisconsin Works (W–2) group fully cooperates in good faith with efforts directed at establishing paternity and obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for which that parent may be responsible, regardless of whether the parent is the custodial or noncustodial parent of the minor child. Cooperation may not be required if the parent has good cause for failing to cooperate, as determined by the Department in accordance with federal law.

The current chapter DWD 15 contains obsolete information on the cooperation requirements and good cause exemptions for custodial parents under the Aid to Families with Dependent Children program. The proposed chapter DWD 15 specifies the cooperation requirements and good cause exemptions for custodial and noncustodial parents under the W–2 program.

The proposed rule provides that a custodial parent who is a member of a W–2 group must cooperate with efforts directed at identifying and locating an absent parent of a minor child of the custodial parent, establishing the paternity of any child of that parent, and obtaining any support payments or any other payments or property to which that parent may have rights. A custodial parent must cooperate in any action that is relevant to those purposes including the following:

- Providing verbal information, written information, or other evidence that the custodial parent knows, possesses, or might reasonably obtain or signing an affidavit declaring a lack of information, subject to penalty of false swearing pursuant to s. 946.32, Stats.
- Attending interviews and responding to written requests for information by the child support agency.
- Appearing as a witness at hearings or other legal proceedings.
- Attending genetic tests pursuant to judicial or administrative order.
- Paying to the Department or its designee any court–ordered child support payments received directly from the absent parent after an assignment under s. 49.145 (2) (s), Stats., has been made.

The proposed rule provides that a noncustodial parent who is a member of a W–2 group must cooperate in good faith with efforts directed at establishing the paternity of an alleged child of that parent and obtaining any support payments or any other payments or property for which that parent may be responsible. A noncustodial parent must cooperate in any action that is relevant to those purposes including the following:

- Providing verbal information, written information, or other evidence that the noncustodial parent knows, possesses, or might reasonably obtain.
- Appearing at hearings or other legal proceedings.
- Attending genetic tests pursuant to judicial order.
- Paying court–ordered child support to the Department or its designee.

Acts of cooperation for custodial and noncustodial parents do not include involuntary participation in a polygraph, a requirement to sign a voluntary statement of paternity, relinquishment of the right to request a genetic test, or a requirement to sign a stipulation for a child support order.

The child support agency determines if an individual is not cooperating with child support services. The child support agency may determine that a custodial parent is not

cooperating if, without adequate reason, the custodial parent misses two consecutive agency appointments; misses one agency appointment and fails to respond to a written communication from the agency within a 90–day period; or fails to appear for a hearing, other legal proceeding, or a genetic test. Adequate reason includes personal or family illness or injury; family crisis; breakdown in transportation arrangements; inclement weather that causes a general breakdown in travel; demonstrable mail problem that could result in the failure to receive a hearing notice, appointment notice, or written request for information; or other reasonable circumstances as determined by the child support agency.

The child support agency may determine that a noncustodial parent is not cooperating if the noncustodial parent is the subject of a warrant relating to paternity or support, including a criminal warrant for failure to support pursuant to s. 948.22, Stats., a civil warrant for contempt of court pursuant to ch. 785, Stats., or an arrest warrant pursuant to s. 818.02 (5) or (6), Stats., excluding a warrant issued for failure to effect service of process.

An individual who wants to restore cooperative status after being determined noncooperative must demonstrate cooperation by performing the action required for the child support agency or court to proceed with the case. The child support agency shall provide the individual who has been found noncooperative with the opportunity to resume cooperation within 30 days of contacting the child support agency to express an intent to cooperate. When a rescheduled court hearing cannot occur within 30 days, the child support agency shall either lift the noncooperation determination upon contact from the individual or make it possible for the individual to perform some other required activity within 30 days of the contact.

The W–2 agency shall provide a written notice describing the cooperation requirements and the right to good cause as an exception to the cooperation requirements to all applicants and participants of Wisconsin works. The notice shall be provided to applicants when they apply for W–2 and to participants when a child is added to the W–2 group, at reapplication for continued benefits, and if a participant discloses to his or her W–2 financial and employment planner that the participant is experiencing circumstances that may meet the good cause criteria.

A custodial or noncustodial parent may request a good cause exemption from the cooperation requirements when it is in the best interest of the child or parent. Good cause for a custodial or noncustodial parent's failure to cooperate exists when the W–2 agency determines that any of the following criteria applies:

- Cooperation is reasonably anticipated to result in either physical or emotional harm to the child, including threats of illegal child kidnapping or domestic abuse.
- Cooperation is reasonably anticipated to result in either physical or emotional harm to the parent, including domestic abuse.
- Cooperating with the child support agency would make it more difficult for the individual to escape domestic abuse.
- The child was conceived as a result of incest or sexual assault.
- The parent is being assisted by a public or licensed private social services agency in deciding whether to terminate parental rights and discussions have not gone on for more than 3 months.
- A petition for the adoption of the child has been filed with a court, except this does not apply as a good cause exemption from the responsibility to make payments under an existing court order.

A W–2 agency shall provide a written good cause claim form to any W–2 applicant or participant on request. The claim form shall describe the good cause criteria and appropriate documentation to corroborate a good cause claim. An applicant or participant may file a good cause claim with the W–2 agency at any time. The applicant or participant shall specify the circumstances that the applicant or participant believes provide sufficient good cause for not cooperating and shall indicate whether the applicant or participant requests that the child support agency proceed without his or her cooperation if good cause is granted, if that is possible. Upon receipt of the good cause claim, the W–2 agency shall notify the child support agency within 2 days that no further action may be taken until it is determined whether good cause exists. The applicant or participant may submit corroborative evidence to the W–2 agency within 20 days from the day the claim was made. If the good cause claim is based on domestic abuse and no corroborative evidence is currently available, the W–2 agency may permit the applicant or participant to submit evidence to the W–2 agency within 60 days from the date the claim was made.

If an individual is cooperating with the W–2 agency in furnishing evidence and information to be used in determining the good cause claim and other eligibility criteria are met, Wisconsin Works shall not be denied, delayed, reduced, or discontinued pending the determination of a good cause claim.

The W–2 agency shall require an applicant or participant who claims a good cause exemption to submit at least one document of corroborative evidence in addition to the applicant or participant's statement. The W–2 agency may investigate any good cause claim when the applicant or participant's statement and corroborative evidence does not provide sufficient basis for determination. The W–2 agency may contact the child support agency in the course of the investigation, but may not contact the individual alleged to have committed acts that are the basis of good cause claim based on domestic abuse, physical or emotional harm, or incest or sexual assault.

The child support agency shall be given the opportunity to review and comment on the findings of the W–2 agency prior to the final determination on good cause in all good cause claims. The W–2 agency shall determine if good cause exists within 45 days from the date the claim was signed, unless an extension to submit evidence was granted to the applicant or participant or more time is necessary for the W–2 agency to obtain evidence. If the W–2 agency allowed up to 60 days to submit evidence for a claim of domestic abuse, the agency must determine if good cause exists within 85 days from the date the claim was signed.

If the W–2 agency determines that the applicant or participant does not have good cause for failing to cooperate with efforts directed at establishing paternity and obtaining support payments, the W–2 agency shall notify the child support agency that it may proceed with child support services and require the cooperation of the applicant or participant. The W–2 agency shall promptly notify the applicant or participant of the determination and the right to a review of the agency decision. The child support agency shall not proceed with child support services for 10 days from the date of the notice to the applicant or participant to allow the individual the opportunity to withdraw the application, request the case be closed, or request a review of the agency decision.

If the W–2 agency determines that the applicant or participant does have good cause for failing to cooperate with efforts directed at establishing paternity and obtaining support payments, the W–2 agency shall direct the child

support agency to suspend all further case activities if the applicant or participant did not request the child support agency to proceed without his or her cooperation. The W–2 agency shall notify the child support agency that it may proceed with child support services without the cooperation of the applicant or participant if the applicant or participant did request that the child support agency proceed without his or her cooperation. If good cause was granted for criteria in s. DWD 15.05 (1) to (4), the child support agency shall send a notice to the individual alleged to have committed the acts that are the basis of the good cause claim that states that the agency is proceeding without the cooperation of the applicant or participant. The W–2 agency shall promptly notify the applicant or participant of the determination and the basis for the determination in writing.

A Wisconsin Works group that includes an applicant or participant who fails to cooperate with the child support agency without good cause is ineligible to receive Wisconsin Works until cooperation with the child support agency occurs. An individual who is a member of a W–2 group that fails 3 times to meet the cooperation requirements without good cause remains ineligible until all of the members of the W–2 group cooperate or for a period of 6 months, whichever is later. A custodial parent with a child under 60 days old is exempt from sanction for refusing to cooperate with requirements for that child.

A Wisconsin Works applicant or participant who is denied a good cause exemption from the requirement of cooperation with the child support agency or who disputes any decision by the W–2 agency may petition the W–2 agency for a review of the agency decision. A Wisconsin works applicant or participant who is denied eligibility based on a noncooperation determination by a child support agency may petition the child support agency for review of the agency decision. The procedures of s. DWD 12.22 apply to the review, except that the applicant or participant may submit a request for review to the child support agency, the child support agency will conduct the fact–finding procedure, and the applicant or participant or a representative may appear for the fact–finding via telephone conference if the child support agency is in a different county than the applicant or participant's current residence. The child support agency shall be given reasonable notice and may participate in any fact–finding or hearing resulting from a good cause investigation or good cause determination.

The W–2 agency shall review good cause exemptions that are based on circumstances subject to change at each redetermination of eligibility or upon new evidence. Good cause determinations based on permanent circumstances need not be reviewed. If the W–2 agency determines that good cause for noncooperation no longer exists, the parent shall be allowed 10 days before cooperation requirements are imposed to request that the case be closed or request an agency review.

Initial Regulatory Flexibility Analysis

Privately–run W–2 agencies will be affected by the rule change, but the rule will not have a significant economic impact because there is no material change from current procedures.

Fiscal Impact

The proposed rule has no significant fiscal effect.

Contact Information

The proposed rules are available on the DWD web site at <http://www.dwd.state.wi.us/dwd/hearings.htm>.

A paper copy may be obtained at no charge by contacting: Elaine Pridgen

Office of Legal Counsel
 Dept. of Workforce Development
 201 E. Washington Avenue
 P.O. Box 7946
 Madison, WI 53707-7946
 (608) 267-9403
 pridgel@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than May 3, 2002, will be given the same consideration as testimony presented at the hearing.

Notice of Hearing

Workforce Development Workforce Solutions, Chs. DWD 11-59 [CR 02-040]

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.124 (1g) and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider ch. DWD 19, relating to child support cooperation for food stamps.

Hearing Information

May 1, 2002 GEF 1 Building, Room B103
 Wednesday 201 E. Washington Avenue
 1:00 p.m. Madison

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: ss. 49.124 (1g), and 227.11, Stats.

Statute interpreted: s. 49.124 (1g), Stats.

Relevant federal law: 7 USC 2015 (l), (m), and (n); 7 CFR 273.11 (o), (p), and (q)

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 allows states to require food stamp recipients to cooperate with child support services as a condition of food stamp eligibility and to disqualify individuals who are in arrears in court-ordered child support payments. Wisconsin adopted these federal options in 1997 Wis. Act 27. The federal Food and Nutrition Service announced the final rule affecting states who chose to adopt these options in the Federal Register on January 17, 2001, with a mandatory implementation date of October 1, 2001.

This proposed rule specifies the cooperation requirements and good cause exemptions for custodial parents or other individuals who live with and exercise parental control over a child who is under the age of 18 and who has an absent parent, noncustodial parents, and alleged fathers under the food stamp program in Wisconsin. A custodial parent or other

individual who lives with and exercises parental control over a child who is under 18 years old and who has an absent parent must cooperate with efforts directed at identifying and locating the absent parent of the child, establishing paternity of a nonmarital child, establishing or enforcing a support order, and obtaining other payments or property to which that custodial parent, individual who exercises parental control, or child may have rights. An alleged father or a noncustodial mother must cooperate with efforts directed at establishing the paternity of the child. A noncustodial parent must cooperate with efforts directed at providing or obtaining support for the child. If an individual is receiving W-2 or Medicaid and has already been determined to be cooperating with the child support agency or has been determined to have good cause for not cooperating, then the income maintenance agency will determine the individual to be cooperating with these requirements for food stamp purposes.

Acts of cooperation for an alleged father, noncustodial parent, and a custodial parent or other individual who lives with and exercises parental control over a child who is under the age of 18 and who has an absent parent include providing verbal information, written information, or other evidence known to, possessed by, or reasonably obtainable by the individual subject to the cooperation requirements and appearing at hearings or other legal proceedings. In addition to these requirements, acts of cooperation for a custodial parent or other individual who lives with and exercises parental control over a child who is under the age of 18 and who has an absent parent include attending interviews and responding to written requests for information by the child support agency, paying court-ordered child support received directly from the noncustodial parent to the department or its designee, and providing information or signing an affidavit declaring a lack of information, subject to penalty of false swearing pursuant to s. 946.32, Stats.

Acts of cooperation for a custodial parent also include attending genetic tests pursuant to judicial or administrative order. Acts of cooperation for an alleged father include attending genetic tests pursuant to judicial order, and acts of cooperation for a noncustodial parent include paying court-ordered child support to the department or its designee pursuant to s. 767.29, Stats.

Acts of cooperation do not include involuntary participation in a polygraph, a requirement to sign a voluntary statement of paternity, relinquishment of the right to request a genetic test, or a requirement to sign a stipulation for a child support order.

The child support agency determines if an individual is not cooperating with child support services. The child support agency may determine that a custodial parent or other individual who lives with and exercises parental control over a child who is under the age of 18 and who has an absent parent is not cooperating if, without adequate reason, the individual misses two consecutive agency appointments, misses one agency appointment and fails to respond to a written communication from the agency within a 90-day period, or fails to appear for a hearing or other legal proceeding. In addition, the child support agency may determine that a custodial parent is not cooperating if the individual fails to appear for a genetic test. Adequate reason for failure to comply with these requirements includes personal or family illness or injury; family crisis; breakdown in transportation arrangements; inclement weather that causes a general breakdown in travel; demonstrable mail problem that could result in the failure to receive a hearing notice, appointment notice, or written request for information; or other reasonable circumstances as determined by the child support agency.

The child support agency may determine that a noncustodial parent or alleged father is not cooperating if the noncustodial parent or alleged father is the subject of a warrant relating to paternity or support, including a civil warrant for contempt of court pursuant to ch. 785, Stats., or an arrest warrant pursuant to s. 818.02 (5) or (6), Stats., excluding a warrant issued for failure to effect service of process. The child support agency may determine that a noncustodial parent is not cooperating if the individual is the subject of a criminal warrant for failure to support pursuant to s. 948.22, Stats.

The child support agency may also determine that a noncustodial parent is not cooperating if the noncustodial parent fails to pay court–ordered child support so that the delinquency balance is three months or more of the court–ordered payment amount unless the court or child support agency is allowing the parent to delay payments or the parent is in compliance with a payment plan approved by the child support agency. Under federal law, a parent who is obligated by court order to provide child support payments and is delinquent in that month is ineligible for food stamps unless a court or child support agency is allowing the individual to delay the child support payments or the individual is complying with a payment plan approved by a child support agency. 7 CFR 273.11(q)(2)(iii) allows states the option to determine that an individual has good cause for nonsupport. Under this rule and s. 49.124 (1g) (e) 1., Stats., a delinquency that equals less than 3 months of the court–ordered support payments will be automatically deemed good cause for nonsupport. This rule also adopts the federal option to limit arrears disqualification to noncustodial parents.

An individual who wants to restore cooperative status after being determined noncooperative must demonstrate cooperation by performing the action required for the child support agency or court to proceed with the case. The child support agency shall provide the individual who has been found noncooperative with the opportunity to resume cooperation within 30 days of contacting the child support agency to express an intent to cooperate. When a rescheduled court hearing cannot occur within 30 days, the child support agency shall either lift the noncooperation determination upon contact from the individual or make it possible for the individual to perform some other required activity within 30 days of the contact.

The income maintenance agency shall issue a written notice describing the cooperation requirements and the right to good cause as an exception to the cooperation requirements to all applicants and recipients of food stamps. The notice shall be provided to applicants when they apply for food stamps and to recipients when a child is added to the food stamp household, at reapplication for continued benefits, and if a recipient discloses to his or her income maintenance worker that the recipient is experiencing circumstances that may meet the good cause criteria.

A custodial parent or other individual who lives with and exercises parental control over a child who is under the age of 18 and who has an absent parent, noncustodial parent, or alleged father may request a good cause exemption from the cooperation requirements when it is in the best interest of the child. Good cause for failure to cooperate exists when the income maintenance agency determines that any of the following criteria applies:

- Cooperation is reasonably anticipated to result in either physical or emotional harm to the child, including threats of illegal child kidnapping or domestic abuse.

- Cooperation is reasonably anticipated to result in either physical or emotional harm to the parent, including domestic abuse.

- Cooperating with the child support agency would make it more difficult for the individual to escape domestic abuse or unfairly penalize the individual who is or has been victimized by such abuse, or the individual who is at risk of further domestic abuse.

- The child was conceived as a result of incest or sexual assault.

- The parent is being assisted by a public or licensed private social services agency in deciding whether to terminate parental rights and discussions have not gone on for more than 3 months.

- A petition for the adoption of the child has been filed with a court, except this does not apply as a good cause exemption from the responsibility to make payments under an existing court order.

- A noncustodial parent's delinquency equaled less than 3 months of the court–ordered support payments during the previous month.

- Any other good cause criteria used in the Wisconsin works program.

An income maintenance agency shall provide a written good cause claim form to any food stamp applicant or recipient on request. The claim form shall describe the good cause criteria and appropriate documentation to corroborate a good cause claim. An applicant or recipient may file a good cause claim with the income maintenance agency at any time. The applicant or recipient shall specify the circumstances that the applicant or recipient believes provide sufficient good cause for not cooperating and shall indicate whether the applicant or recipient requests that the child support agency proceed without his or her cooperation if good cause is granted, if that is possible. Upon receipt of the good cause claim, the income maintenance agency shall notify the child support agency within 2 days that no further action may be taken until it is determined whether good cause exists. The applicant or recipient may submit corroborative evidence to the income maintenance agency within 20 days from the day the claim was made. If the good cause claim is based on domestic abuse and no corroborative evidence is currently available, the income maintenance agency may permit the applicant or participant to submit evidence to the income maintenance agency within 60 days from the date the claim was made.

If an individual is cooperating with the income maintenance agency in furnishing evidence and information to be used in determining the good cause claim and other eligibility criteria are met, food stamps shall not be denied, delayed, reduced, or discontinued pending the determination of a good cause claim.

The income maintenance agency shall require an applicant or recipient who claims a good cause exemption to submit at least one document of corroborative evidence in addition to the applicant or recipient's statement. The income maintenance agency may investigate any good cause claim when the applicant or recipient's statement and corroborative evidence does not provide sufficient basis for determination. The income maintenance agency may contact the child support agency in the course of the investigation, but may not contact the individual alleged to have committed acts that are the basis of good cause claim based on domestic abuse, physical or emotional harm, or incest or sexual assault.

The child support agency shall be given the opportunity to review and comment on the findings of the income

maintenance agency prior to the final determination on good cause by the income maintenance agency in all good cause claims. The income maintenance agency shall determine if good cause exists within 45 days from the date the claim was signed, unless an extension to submit evidence was granted to the applicant or recipient or more time is necessary for the income maintenance agency to obtain evidence. If the income maintenance agency allowed up to 60 days to submit evidence for a claim of domestic abuse, the agency must determine if good cause exists within 85 days from the date the claim was signed.

If the income maintenance agency determines that the applicant or recipient does not have good cause for failing to cooperate with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, and providing or obtaining support for the child, the income maintenance agency shall notify the child support agency that it may proceed with child support services and require the cooperation of the applicant or recipient. The income maintenance agency shall promptly notify the applicant or recipient of the determination and the right to a review of the agency decision. The child support agency shall not proceed with child support services for 10 days from the date of the notice to the applicant or recipient to allow the individual the opportunity to withdraw the application or request the case be closed, exclude allowable individuals from the food stamp household, or request a review of the agency decision.

If the income maintenance agency determines that the applicant or recipient does have good cause for failing to cooperate with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, and providing or obtaining support for the child, the income maintenance agency shall direct the child support agency to suspend all further case activities if the applicant or recipient did not request the child support agency to proceed without his or her cooperation. The income maintenance agency shall notify the child support agency that it may proceed with child support services without the cooperation of the applicant or recipient if the applicant or recipient did request that the child support agency proceed without his or her cooperation. The income maintenance agency shall promptly notify the applicant or recipient of the determination and the basis for the determination in writing. If good cause was granted for criteria in s. DWD 19.05 (1) to (4), the child support agency shall send a notice to the individual alleged to have committed acts that are the basis of the good cause claim that states that the agency is proceeding without the cooperation of the applicant or recipient.

A member of a food stamp household who is required to cooperate with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, or providing or obtaining support for the child and

refuses to cooperate without good cause shall be ineligible to participate in the food stamp program. Other individuals in that food stamp household who are cooperating or who do not have cooperation requirements are eligible to receive food stamps. A woman who is pregnant or a custodial parent with a child who is under 60 days old is exempt from sanction for failing to cooperate with requirements for any child. A minor parent is exempt from sanction for failing to comply with the cooperation requirements.

A food stamp applicant or recipient who is denied eligibility based on a determination that the individual has refused to cooperate or is denied a good cause exemption from the child support cooperation requirement may request a departmental review. A food stamp applicant or recipient who is denied eligibility based on a determination of noncooperation by the child support agency is encouraged, but not required, to file an administrative complaint with the child support agency to attempt to resolve the matter upon agreement of all parties. The child support agency shall be given reasonable notice and may participate in any hearing resulting from a good cause investigation or good cause determination.

The income maintenance agency shall review good cause exemptions that are based on circumstances subject to change at each redetermination of eligibility or upon new evidence. Good cause determinations based on permanent circumstances need not be reviewed. If the income maintenance agency determines that good cause for noncooperation no longer exists, the recipient shall be allowed 10 days before cooperation requirements are imposed to request that the case be closed, exclude allowable individuals from the food stamp household, or request a review of the agency decision.

Initial Regulatory Flexibility Analysis

The proposed rule does not affect small business as defined in s. 227.114, Stats.

Fiscal Impact

The proposed rule has no significant fiscal effect.

Contact Information

The proposed rules are available on the DWD web site at <http://www.dwd.state.wi.us/dwd/hearings.htm>.

A paper copy may be obtained at no charge by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
201 E. Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403
pridgel@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than May 3, 2002, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

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

Technical College System Board

(CR 01–137)

Chs. TCS 10 and 16, relating to tuition and fee refunds, and grants to students.

Transportation

(CR 01–093)

Chs. Trans 260 and 261, relating to single and multiple trip permits for mobile homes and modular building sections.

Volunteer Fire Fighter–Emergency Medical Technician Service Award Board

(CR 01–123)

Ch. VFF–EMT 1, relating to a length of service award program for volunteer firefighters and emergency medical technicians.

Rule orders filed with the revisor of statutes bureau

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

**Commerce
(CR 01-062)**

An order affecting ch. Comm 32, relating to public employee safety and health.
Effective 7-1-02 & 1-1-03

**Commerce
(CR 01-135)**

An order affecting ch. Comm 64, relating to heating, air conditioning and ventilation.
Effective 7-1-02

**Commerce
(CR 01-147)**

An order affecting ch. Comm 107, relating to the Wisconsin technology zone program.
Effective 6-1-02

**Commerce
(CR 01-150)**

An order affecting ch. Comm 7, relating to explosive materials.
Effective 6-1-02

**Public Instruction
(CR 01-130)**

An order affecting ch. PI 27, relating to the commencement of a school term.
Effective 5-1-02

**Transportation
(CR 01-120)**

An order affecting ch. Trans 305, relating to standards for vehicle equipment.
Effective 6-1-02

Public notice

Insurance

Insurance Commissioner Connie L. O'Connell has determined that two independent review organizations are certified in accordance with s. 632.835 (4), Stats., and are available to effectively provide the independent reviews required under s. 632.835, Stats. In accordance with s. 632.835 (8), Stats., the Commissioner is providing notice that effective June 15, 2002, independent review procedures will begin operating.

Notice of nonacquiescence

Tax Appeals Commission

SSM HEALTH CARE	:	
Petitioner,		NOTICE OF NONACQUIESCENCE
v.	:	Docket No. 95-S-97
WISCONSIN DEPARTMENT OF REVENUE,		
Respondent.	:	

Pursuant to Sec. 73.01 (4) (e) 2., Stats., the respondent hereby gives notice that, although it is not appealing the Order of the Tax Appeals Commission rendered in the above-captioned matter dated February 22, 2002, it has adopted a position of nonacquiescence in regard to those parts of the Order which state or imply that the St. Marys Older Adult Services Lifeline Program (“Lifeline Program”) must be specifically enumerated in a tax imposition statute in order to be taxable.

Further, it should be understood that, despite this decision, the respondent considers current Sec. 77.52 (2) (a) 5m., Stats., to require imposition of tax on Lifeline Program gross receipts after the period involved in this matter (1989–1992). Sec. 77.52 (2) (a) 5m, Stats., was created by S. 2388, 1997 Wisconsin Act 27, and was effective for transactions that occurred on or after December 1, 1997.

The effect of this action is that, although said Order is binding on the parties for the instant case and will be extended to other parties providing or purchasing the Lifeline Program until November 30, 1997, the Commission’s conclusions of law, the rationale and construction of statutes with regard to the Lifeline Program are not binding upon or required to be followed by the respondent in other cases.

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