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Table of contents

Emergency rules now in effect.**Pages 4 to 8**

Agriculture, Trade and Consumer Protection:

Rules relating to credit report security freezes.

Commerce:

Financial Resources for Businesses and Communities, Chs. Comm 104–131

Rules relating to tax credits and exemptions for internet equipment used in the broadband market.

Dentistry Examining Board:

Rules relating to the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation–enteral, conscious sedation–parenteral, deep sedation, and general anesthesia, and the requirements for each level.

Health and Family Services:

Community Services, Chs. HFS 30—

Rules relating to the adoption of children to include preadoption training requirements that will apply to private adoptions, international adoption, and adoptions of children with special needs and affecting small businesses.

Medical Assistance, Chs. HFS 101–109Rules affecting **ch. HFS 107**, relating to benefits covered by the Wis. Medical Assistance program, and affecting small businesses. [**First Appearance**]

Natural Resources:

Fish and Game, etc., Chs. NR 1—

Rules relating to contracting for timber sale establishment services on state land.

Rules relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Rules relating to the control of fish diseases and invasive species.

Rules affecting **chs. NR 19 and 20**, relating to the control of fish diseases and invasive species. [**First Appearance**]

Optometry Examining Board:

Rules relating to continuing education.

Regulation and Licensing:

Rules relating to substance abuse professionals.

Transportation:

Rules relating to allowing the operation of certain 2–vehicle combinations on certain highways without a permit.

Workforce Development:

Workforce Solutions, Chs. DWD 11 to 59

Rules relating to child care rates.

Rules relating to child care enrollment underutilization.

Public Works Construction, Chs. DWD 290–294

Rules relating to the adjustment of thresholds for application of prevailing wage rates.

Scope statements.

Insurance:

Pages 9 to 13

Rules affecting ch. Ins 2, relating to use of the 2001 CSO Preferred Class Structure Mortality Table in determining reserve liabilities.

Medical Examining Board:

Rules affecting ch. Med 8, relating to prescribing limitations on physician assistants.

Natural Resources:

Rules relating to preventing the spread of the viral hemorrhagic septicemia virus from the Great Lakes to hatcheries, inland lakes, and the Mississippi River drainage.

Rules affecting ch. NR 140, relating to groundwater quality standards.

Rules affecting chs. NR 406, 407 and 445, relating to implementing air permit requirements and hazardous air pollutant emission requirements for sources of emissions of hazardous air contaminants associated with agricultural waste.

Rules affecting ch. NR 500 series, relating to the management of accumulated sediment in detention structures required by the Clean Water Act (CWA).

Submittal of rules to legislative council clearinghouse.**Page 14**

Health and Family Services:

Rules affecting chs. HFS 83, 88, 89, 132, and 134, relating to reporting requirements regarding involuntary administration of psychotropic drugs.

Rules affecting ch. HFS 107, relating to prior authorization of dental services.

Rule–making notices.**Pages 15 to 23**

Agriculture, Trade and Consumer Protection:

Hearings to consider rules affecting chs. ATCP 60, 69, 70, 71, 75, 77, 80 to 82 and 85, relating to food and dairy license and reinspection fees.

Elections Board:

Hearing to consider emergency rules creating s. EIBd 3.50, relating to charges for voter registration data.

Health and Family Services:

Hearing to consider rules affecting ch. HFS 107, relating to benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

Natural Resources:

Hearing to consider rules affecting chs. NR 400, 406, 407, 410 and 439, relating to construction permits and stack test requirements.

Revenue:

Hearing to consider rules affecting ch. Tax 1, relating to electronic funds transfer.

Submittal of proposed rules to the legislature.**Page 24**

Commerce:

CR 07–007 – Chs. Comm 5 and 20, relating to dwelling contractor certification.

Regulation and Licensing:	CR 06-125 – Chs. RL 4 and 174 to 177, relating to the registration of sanitarians.
Transportation:	CR 06-103 – Ch. Trans 200, relating to specific information signs.
Veterans Affairs:	CR 07-022 – Ch. VA 8, relating to the county veterans service officer grant program.
Rule orders filed with the revisor of statutes bureau.	Page 25
Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors:	CR 06-057 – An order affecting A-E 6, relating to land surveyor education and experience requirements.
Health and Family Services:	CR 05-052 – An order affecting ch. HFS 107, relating to private duty nursing and respiratory care service benefits covered by the Wisconsin medical assistance program.
Natural Resources:	CR 06-104 – An order affecting ch. NR 17, relating to hound dog training and trialing on captive wild animals. CR 06-111 – An order affecting ch. NR 25, relating to commercial fishing open seasons in Lake Michigan for chubs.
Public Service Commission:	CR 06-106 – An order affecting ch. PSC 135, relating to incorporating recent changes to the federal pipeline safety regulations.

Emergency rules now in effect

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

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

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

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

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

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

Agriculture, Trade & Consumer Protection

Rules adopted creating **ch. ATPC 112**, relating to credit report security freezes.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) will administer s. 100.54, Stats. as of January 1, 2007. DATCP is required under s. 100.54 (12), Stats. to adopt rules related to identification required of consumers requesting credit report security freezes.

(2) As of January 1, 2007, s. 100.54, Stats. will be in effect, however without an emergency rule the statute will be unclear regarding what constitutes proper identification for purposes of creating a security freeze, temporarily releasing a security freeze or permanently removing a security freeze from a consumer credit report.

(3) DATCP is adopting this emergency rule for the sole purpose of allowing consumers to clearly place a security freeze on their consumer credit report while the permanent rulemaking process is completed.

Publication Date: January 19, 2007
Effective Date: January 19, 2007
Expiration Date: June 18, 2007
Hearing Date: February 12, 2007

Commerce (Financial Resources for Businesses and Communities, Chs. Comm 104–131)

Rules adopted creating **ch. Comm 135**, relating to tax credits and exemptions for internet equipment used in the broadband market.

Exemption From Finding of Emergency

These rules establish the criteria for administering a program that will (1) certify businesses as temporarily eligible for tax credits and exemptions for Internet equipment used in the broadband market, and (2) allocate up to \$7,500,000 to these businesses for these tax credits and exemptions.

Pursuant to section 227.24 of the statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper. In accordance with section 17 (1) (d) of 2005 Wisconsin Act 479, this rule will remain in effect until January 1, 2008, or until the Department reports its certifications and determinations under this rule to the Department of Revenue, whichever is sooner.

The rules specify who is eligible for the income and franchise tax credits and the sales and use tax exemptions in this program, for Internet equipment used in the broadband market. Eligible equipment is also specified, along with how to apply for the certifications and allocations. Parameters for allocating the authorized total of \$7,500,000 are likewise specified. These parameters emphasize (1) efficiently initiating broadband Internet service in areas of Wisconsin that otherwise are not expected to soon receive this service, and (2) encouraging economic or community development. The rule chapter also describes the time–specific legislative oversight that is established in 2005 Act 479 for these allocations, and describes the follow–up reports that the Act requires from every person who receives a sales or use tax exemption under this chapter.

Publication Date: February 20, 2007
Effective Date: February 20, 2007
Expiration Date: See section 17 (1) (d) 2005 Wis. Act 479
Hearing Date: March 26, 2007

Dentistry Examining Board

Rules were adopted amending **ch. DE 11**, relating to better identifying the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation–enteral, conscious sedation–parenteral, deep sedation, and general anesthesia, and the requirements for each level.

Finding of Emergency

The board finds that failure to delay the effective date of CR04–095, from January 1, 2007, to July 1, 2007, will create a danger to the public health, safety and welfare. The extra six months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients.

Publication Date: December 21, 2006
Effective Date: December 29, 2006
Expiration Date: May 28, 2007
Hearing Date: January 31, 2007

Health and Family Services (Community Services, Chs. HFS 30—)

Rules adopted revising **ch. HFS 51**, relating to the adoption of children to include preadoption training requirements that will apply to private adoptions, international adoption, and adoptions of children with special needs and affecting small businesses.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

On April 10, 2006, the Wisconsin State Legislature enacted 2005 Wisconsin Act 293, which amended s. 48.84, Stats., to require first-time adoptive parents to receive preadoption training before a child may be placed for adoption by a court pursuant to s. 48.833, Stats., or before a prospective adoptive parent may petition for placement of a child for adoption under s. 48.837, Stats., or before a proposed adoptive parent may bring a child into Wisconsin for an international adoption under s. 48.839, Stats. The Act further requires the Department to promulgate rules that establish the number of hours and topics covered in the training of first-time adoptive parents. The training must cover issues that may confront adoptive parents in general and that may confront adoptive parents of special needs or international children.

The Act requires the rules to be effective April 1, 2007. Because the rules apply not only to the Department which administers the special needs adoption program with the assistance of private agencies under contract with the Department, and with the cooperation of county human and social service agencies, but also to private agencies that handle domestic adoptions and international adoptions, the Department has invested a significant amount of time gathering information from agencies regarding what training is currently provided to preadoptive parents. The Department conducted written and follow-up telephone surveys with private agencies to determine what content was currently being taught, and the format used for training. The Department's Adoption Services Committee met over several months to determine the curriculum for special needs adoption, the competencies that would be required for all training programs, the number of hours and the documentation that would be required in the training. In addition, the Department reviewed the proposed Hague Convention (federal) training requirements for proposed adoptive parents of international children to assure that Wisconsin's training requirements for first-time pre-adoptive parents would meet or exceed those requirements.

As a result of this extensive collaboration with stakeholders, development of the proposed training requirements has been unusually long and now requires the training requirements to be implemented as an emergency rule in order to meet the legislated date of April 1, 2007, the date adoptive parents must begin receiving preadoptive training.

This emergency rules are substantially similar to the proposed permanent rules except in the hours of training required. Under the emergency order, adoption agencies are required to provide adoptive parents with 2 hours of orientation and 10 hours of training. The proposed permanent rule requires adoption agencies to provide 2 hours of orientation and 16 hours of training. Stakeholder agencies have indicated that the additional 5 months under the emergency rule will allow them to prepare all proposed adoptive parents to meet the orientation and training requirements under the proposed permanent rules.

Publication Date: March 31, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007
Hearing Date: April 27, 2007

Health and Family Services (Medical Assistance, Chs. HFS 101–109)

Rules adopted revising **ch. HFS 107**, relating to benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public, health, safety and welfare. The facts constituting the emergency are as follows:

A recent revision to s. HFS 107.07 (2), the prior authorization subsection of the dental services section of the Medicaid Administrative Code, caused a result which was not intended by the Department. To correct this error, the Department is promulgating rules to clarify that the Department's intent is to require prior authorization for orthodontia and other services provided under early and periodic screening, diagnosis and treatment (EPSDT) services. The medical necessity of these services is determined by the Department based on information submitted by the provider. Thus, it is necessary to require prior authorization to determine the appropriateness of providing these services to an individual recipient.

In the previous rulemaking (Clearinghouse Rule 05-033) the prior authorization requirement was removed for most procedures that had high rates of approval (greater than 75%). The change was intended to reduce the staff time required for dental offices to process prior authorization requests. The Department did not intend to remove the requirement for prior authorization for orthodontia and other services. The Department specifically stated, in Clearinghouse Rule 05-033, that "Procedures where appropriate pricing requires a high degree of clinical knowledge (e.g., orthodontics and TMJ surgery), and procedures with strict time limitations (e.g., dentures) are also proposed to retain prior authorization."

The language that was adopted, however, has been interpreted by at least one dentist to mean that prior authorization is no longer required to provide orthodontia to recipients. This interpretation was upheld by an administrative law judge in an administrative hearing. The Department believes that the interpretation of the administrative law judge could open up the Department to being required to pay for procedures that are purely cosmetic. Because the intent of the Department and the language adopted, as recently interpreted, had opposite effects, the Department is promulgating rules to revise section s. HFS 107.07 to clarify the intent of the rule.

A basic concept of the Medicaid program is that services must be medically necessary to be reimbursable. Allowing the existing rule language to remain in its present form could require reimbursement for orthodontia that is not medically justified.

Publication Date: April 30, 2007
Effective Date: April 30, 2007
Expiration Date: September 27, 2007

Natural Resources (4) (Fish and Game, etc., Chs. NR 1—)

1. Rules adopted amending **s. NR 1.21** and creating **s. NR 1.26**, relating to contracting for timber sale establishment services on state land.

Exemption from finding of emergency

As provided in section 13 of 2005 Wis. Act 166, “Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide a finding of emergency for a rule promulgated under this subsection.”

Section 1 of the proposed rule distinguishes between timber sales related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services, including prequalification of bidders based on experience with timber sales and related forest inventory work. Section 2 makes technical corrections in the definition of educational requirements for cooperating foresters. The change would make educational requirements for cooperating foresters and department foresters identical, including the allowance of training equivalent to that obtained at a college accredited by the Society of American Foresters.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

2. Rules adopted creating **s. NR 45.075**, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Exemption from finding of emergency

As provided in section 13 of 2005 Wis. Act 166, notwithstanding s. 227.24, Stats., the Department is not required to provide a finding of emergency for this rule and the emergency rule will remain in effect until a permanent rule is promulgated.

Rule FR–11–07(E) specifies those emergencies on forested land under the jurisdiction of the department over which the chief state forester shall have management authority. This rule describes causes of unforeseen damage or threat of damage to trees that could lead the chief state forester to declare an emergency and assume management authority. Included in the list of damaging agents that could lead to the declaration of an emergency are those required by the legislature: invasive species, pest infestation, disease, and damage to timber from fire, snow, hail, ice, or wind. The rule states that when declaring and responding to an emergency,

the chief state forester shall consider the purpose of and management plan for the affected property in his or her decisions. This rule, however, would allow the chief state forester to take actions not described in the management plan for a property if that were the most appropriate response to the emergency. Finally, this rule describes the processes by which the declaration of the state of emergency shall be made effective, canceled or modified.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

3. Rules adopted revising **chs. NR 19 and 20**, relating to the control of fish diseases and invasive species.

Finding of Emergency

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

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a “notifiable” disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large–scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty–seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

Publication Date: April 8, 2007
Effective Date: April 8, 2007
Expiration Date: September 5, 2007
Hearing Date: May 3, 10 and 17, 2007

4. Rules adopted revising **chs. NR 19 and 20**, relating to the control of fish diseases and invasive species.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a “notifiable” disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large–scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty–seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and

commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

This emergency rule clarifies and expands the emergency rules put into effect on April 8, 2007.

Publication Date: May 2, 2007
Effective Date: May 2, 2007
Expiration Date: September 5, 2007

Optometry Examining Board

A rule was adopted creating **ch. Opt 8**, relating to continuing education.

Exemption from finding of emergency

2005 Wisconsin Act 297 section 58 states in part:

“(3) Continuing education rules. (b) ...Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the optometry examining board is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.”

Plain language analysis

Chapter Opt 8 is being created to incorporate the continuing education requirements that optometrists must complete in order to renew their registrations. As a result of the changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, all optometrist will now be required to complete 30 hours of continuing education. Previously, only optometrists who were certified to use diagnostic pharmaceutical agents (DPA) and therapeutic pharmaceutical agents (TPA) were required to complete continuing education course work.

Publication Date: November 8, 2006
Effective Date: November 8, 2006
Expiration Date: April 7, 2007
Hearing Date: December 7, 2006
Extension Through: June 5, 2007

Regulation and Licensing

Rules adopted creating **chs. RL 160 to 168**, relating to substance abuse professionals.

Exemption from finding of emergency

Section 9140 (1q) of 2005 Wisconsin Act 25 states in part: “Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.”

Plain language analysis

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and other Drug

Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval and professional liability insurance for substance abuse professionals.

Publication Date: November 27, 2006
Effective Date: December 1, 2006
Expiration Date: April 30, 2007
Hearing Date: February 13, 2007

Transportation

Rules adopted revising **ch. Trans 276**, relating to allowing the operation of certain 2–vehicle combinations on certain highways without a permit.

Exemption from finding of emergency

The Legislature, by Section 7 of 2005 Wis. Act 363, provides an exemption from a finding of emergency for the adoption of the rule.

Plain language analysis

Section 348.07 (1), Stats., historically has limited vehicle lengths on Wisconsin highways to 65 feet. Section 348.07(2), Stats., allowed vehicles meeting the specifications of that subsection to operate without permits despite exceeding the 65–foot limit of subsection (1).

2005 Wis. Act 363 amended s. 348.07, Stats., and essentially made 75 feet the default permitted length on the state trunk highway system. Wisconsin’s old default 65–foot overall length limit still applies on all local roads but only applies to state trunk highways that are designated as 65–foot restricted routes by the Department. This emergency rule making establishes a preliminary list of such “65–foot restricted routes.”

Prior to Act 363, s. 348.07 (4), Stats., permitted the Department to designate “long truck routes” upon which no overall length limits apply. The Department designates the state’s long truck routes in s. Trans 276.07. This rule making does not affect those longstanding designations.

The new “default” 75–foot overall length limit applies on state highways that are neither designated as 65–foot restricted routes under this rule making nor long truck routes under s. Trans 276.07.

Definitions have been added to the rule to make it easier to identify the nature of designations made by the Department in Ch. Trans 276.

In drafting this rule the Department noticed several items that it believes may be of special interest to the legislature and which, in the Department’s view, deserve special legislative attention. First, Act 363 did not grant any authority for 75–foot vehicles using the new 75–foot routes to leave those routes to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly facilities or points of loading or unloading. The Department does not believe this oversight was intentional and, on an emergency basis, has designated the intersection of each 75–foot route and any other highway as a long truck route under its authority in s. 348.07 (4), Stats. This will permit trucks to exceed the 65–foot default length limit on local roads to access such facilities and make deliveries. The Department encourages the legislature to consider statutorily establishing access rights for vehicles using 75–foot restricted routes.

The second consequence of Act 363 the Department has discovered in drafting this emergency rule is that one statute

that formerly restricted double–bottom tractor–trailer combinations to the state’s long–truck network was repealed by the deletion of the reference to s. 348.07 (2) (gm), Stats., by the Act’s amendment of s. 348.07 (4), Stats. Under the amended statute, as revised by Act 363, it might appear to a reader that double bottom trucks of unlimited length may operate upon any highway in the state, including local roads and streets, without permits. Section 348.08 (1) (e), Stats., however, continues to provide that double–bottom trucks be restricted to highways designated by the department under s. 348.07 (4). WisDOT believes this provision continues to limit double–bottom operation to long truck routes designated by the Department under s. 348.07 (4), Stats. WisDOT would suggest the deleted reference to (2) (gm) in 348.07 (4), Stats., be re–inserted into the statute to avoid confusion.

Finally, the Department notes that s. 348.07, Stats., is becoming difficult to decipher from a legal standpoint because of the many amendments that have been made to it over the years. It may be that recodifying the statute for the purpose of clarification of the length limitations of Wisconsin law would be helpful to truck and long vehicle operators in this state.

Publication Date: September 15, 2006
Effective Date: September 15, 2006
Expiration Date: See section 7 (2) of 2005 Wis. Act 363
Hearing Date: October 4, 2006

Workforce Development (2) (Workforce Solutions, Chs. DWD 11 to 59)

1. Rules adopted revising **s. DWD 56.06**, relating to child care rates and affecting small businesses.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that 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 child care subsidy budget estimates that the child care subsidy program will have a tight budget by the end of fiscal year 06–07. This is due to flat federal funding, rising caseload, and increased provider costs. To begin to address the tight budget, the Department will not increase the child care subsidy maximum rates for 2007. This emergency rule will maintain the maximum rates at 2006 levels.

Publication Date: January 22, 2007
Effective Date: January 22, 2007
Expiration Date: June 21, 2007
Hearing Date: May 7, 2007

2. Rules adopted revising **ch. DWD 56**, relating to child care enrollment underutilization.

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 child care subsidy budget is expected to have a substantial deficit by the end of state fiscal year 2006–07. While many factors will have an impact on the program’s final fiscal balance, current spending patterns at current rates suggest that the program will exceed its 06–07 budget authorization by approximately \$46 million. This rule will provide for more efficient use of the program’s limited funding.

Publication Date: April 1, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007

Workforce Development (Public Works Construction, Chs. DWD 290–294)

Rules adopted amending **s. DWD 290.155 (1)**, relating to the adjustment of thresholds for application of prevailing wage rates.

Finding of Emergency

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

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids 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. 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.

Publication Date: December 28, 2006
Effective Date: January 1, 2007
Expiration Date: May 31, 2007
Hearing Date: February 19, 2007

Scope statements

Insurance

Subject

Objective of the rule. The proposed rule would allow life insurers to use the 2001 CSO Preferred Class Structure Mortality Table, which reflects differences in mortality between preferred and standard lives in determining minimum reserve liabilities, in accordance with s. 623.06 (2) (am) 3., Stats., and s. Ins 2.80 (4) (a) and (b), Wis. Adm. Code.

Policy Analysis

The existing requirements are contained primarily in s. 623.06 (2) (am) 3., Stats., s. Ins 2.80 (4) (a) and (b), Wis. Adm. Code, and Subch. V of Ch. 50, Wis. Adm. Code. These provisions establish mortality tables to be used by insurers to calculate minimum reserves and requirements related to testing and reporting of actuarial information. The proposed rule will allow insurers, meeting prescribed conditions, to use the 2001 CSO Preferred Class Structure Mortality Table as adopted by the National Association of Insurance Commissioners (NAIC) at the September, 2006, national meeting and published in the NAIC Proceedings (Third Quarter 2006), in determining minimum reserves on policies written after January 1, 2007. The table will allow insurers to reflect differences in mortality between preferred and standard lives in establishing reserve liabilities to more precisely fit the characteristics of outstanding policies. The proposed rule is under consideration as it has been recommended by the NAIC, will increase the ability of management and regulators to monitor financial status, and has been adopted or is in the process of being adopted by a significant number of other states.

Statutory Authority

The statutory authority for this rule is ss. 601.41 (3), 601.42 (3), and ch. 623, Stats.

Staff Time Required To Develop The Proposed Rule

100 hours and no other resources are necessary.

Entities That May Be Affected By The Proposed Rules

The proposed rule will affect insurers which offer life insurance products.

Comparison With Federal Regulations

The office is unaware of any proposed or existing federal regulation that is intended to address the activities to be regulated by this proposed rule.

Medical Examining Board

Subject

Prescribing limitations on physician assistants.

Policy Analysis

Objective of the rule. To modernize rules relating to physician assistants' prescribing limitations.

Currently, physician assistants may issue prescription orders in patient situations described in written guidelines that are reviewed annually by the physician assistant and supervising physician. Prescription orders must be

countersigned by the supervising physician or the patient record must be countersigned within 72 hours or one week, depending on the practice site. Based on physician assistants' advances in licensure and a record of safe prescribing, co-signature of every prescription is no longer needed. Further, re-conceptualizing the required written guidelines for prescribing to reflect delegation of services would allow for more flexibility in the assignment of tasks between the physician and the physician assistant.

Comparison With Federal Regulations

There is no existing or proposed federal regulation.

Entities That May Be Affected By The Proposed Rules

Physicians, physician assistants, and all health care institutions that employ physician assistants.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2), 448.04 (1) (f), 448.05 (5) and 448.40, Stats.

Staff Time Required To Develop The Proposed Rule

100 hours.

Natural Resources

Subject

Viral Hemorrhagic Septicemia virus was diagnosed as the cause of huge fish kills in Lake Huron, Lake St Clair, Lake Erie, Lake Ontario and the St Lawrence River in 2005 and 2006. VHS is an invasive species. It can reasonably be assumed that it is already present in Lake Michigan, although it has not yet been confirmed there or in Lake Superior. The purpose of this rule is to slow or block the spread of the virus from the Great Lakes to hatcheries, inland lakes, and the Mississippi River drainage. VHS is not a human health concern. Because other pathogens and invasive species travel by the same pathways as VHS, this rule will have broader significance.

Policy Analysis

The Department is committed to limiting the spread of invasive species and pathogens in the environment. This rule will aid the Department in controlling the spread of VHS virus in the following ways:

1) It prohibits the possession on the water and use of live bait (crayfish, frogs, and minnows) from outside Wisconsin, except minnows imported in compliance with USDA APHIS and DATCP import and health requirements. Live bait enters Wisconsin from other parts of the country (including probably Lake Ontario) where VHS may be present. Because those requirements preclude the importation of live fish that have not tested negative for VHS, this will help assure that the VHS virus is not introduced to inland waters via live bait.

2) It prohibits the possession on the water and use of dead bait, except used on the water the bait originated from, or on Lake Michigan, Green Bay and their tributaries, or when preserved in a way that would kill VHS virus. VHS virus can survive in dead bait that has been refrigerated or frozen. Great Lakes smelt, lake herring, and chubs and Pacific Ocean herring are used for cut bait in Wisconsin. This provision will help assure that VHS virus is not imported in dead bait.

3) It prohibits the transportation of live fish or fish eggs from waters of the Great Lakes or the Mississippi River drainage, except a) fish being exported in compliance with USDA APHIS regulations and orders, b) fish or fish eggs tested and found to be free of VHS virus, and c) fish or fish eggs transported with the prior written approval of the Department. We want to minimize the possibility that any live fish or fish eggs from VHS–affected waters are transported to VHS–free waters. It is likely that VHS virus is present in Lake Michigan and quite possible that it is present in Lake Superior and the Mississippi River drainage.

4) It requires all boaters to drain water from bilges, ballast, buckets, and live wells immediately after leaving waters of the Great Lakes or of the Mississippi River drainage, unless exempted in writing by the Department. This provision addresses the risk that boaters will inadvertently transport the VHS virus in boats and compartments of boats.

5) It allows the Department to deny permits for the use of non–standard minnow gear by licensed bait dealers, to prevent the spread of invasive species or diseases. Currently the presence of pathogens or invasive species is not sufficient to deny applications for non–standard minnow gear. With this provision, the Department will be able to assure that minnow harvest is not authorized from waters where the VHS virus is known to occur.

Statutory Authority

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

Staff Time Required To Develop The Proposed Rule

Three weeks.

Entities That May Be Affected By The Proposed Rules

This rule will affect commercial fishers, wholesale fish dealers, sport anglers, boaters, and individuals involved in the importation, harvest, rearing, sale, or use of bait.

Comparison With Federal Regulations

In late 2006 the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service issued an emergency order limiting the movement of live fish from Ontario or Quebec into the United States and limiting the interstate movement of live fish. That order does not apply to fish moved within the boundaries of individual states. This rule addresses within–state spread of VHS virus, while the federal order addresses between–state and between country spread of VHS virus. The proposed rule is similar in intent to the federal order, but addresses some additional vectors of spread of this pathogen.

Contact

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Natural Resources

Subject

Amendments are being proposed to Ch. NR 140, Wis. Adm. Code, revising existing state groundwater quality

standards in cases where established federal numbers or health based reference doses for substances have changed, or where significant technical information, not considered when federal numbers or reference doses were established, justifies revision.

Amendments are also proposed to establish new state groundwater quality standards for substances detected in, or with a reasonable probability of entering, the groundwater resources of the state, provided sufficient scientifically valid technical information exists to allow the Department of Health and Family Services (DHFS) to develop recommendations for standards.

Policy Analysis

Background. Chapter NR 140, Wis. Adm. Code, establishes numeric groundwater quality standards for substances of public health and welfare concern. It also creates a framework for implementation of those standards. New and revised groundwater quality standards in NR 140 are based on recommendations developed by DHFS. The Board has approved amendments to NR 140 in 1988, 1990, 1991, 1993, 1995, 1996, 1998, 1999, 2003 and 2006, to revise existing standards, establish new standards and to clarify rule language. There are now groundwater quality standards in NR 140 for 122 substances of public health concern and 8 substances of public welfare concern.

Policy Issues/Analysis of Policy Alternatives. Chapter NR 140, Wis. Adm. Code, was adopted by the Natural Resources Board in 1985 to comply with Wisconsin Statute Chapter 160. Chapter 160, Stats., created as part of the 1983 Wisconsin Act 410 (The Groundwater Bill), requires the Department of Natural Resources to develop groundwater quality standards for substances detected in, or having a reasonable probability of entering, the groundwater resources of the state.

Chapter NR 140, Wis. Adm. Code, establishes groundwater quality standards at two levels: preventive action limit (PAL) and enforcement standard (ES). In accordance with ch. 160, Stats., ES groundwater quality standards for substances of public health concern are established based on recommendations received from DHFS. PAL groundwater quality standards for substances of public health concern are set at either 20% of the concentration of the established ES, or at 10% of the concentration of the established ES if the substance has carcinogenic, mutagenic or teratogenic properties or interactive effects.

Statutory Authority

The Department’s statutory authority to establish state groundwater quality standards is contained in Ch. 160, Stats., and ss. 281.12 (1), 281.15, 281.19 (1) and 299.11, Stats.

Chapter 160, Stats., establishes an administrative process for developing numerical state groundwater quality standards to be used as criteria for the protection of public health and welfare by all state groundwater regulatory programs. Chapter 160, Stats., directs the Department to use this administrative process to establish numeric groundwater quality standards for substances of public health or welfare concern, found in, or having a reasonable probability of being detected in, the groundwater resources of the state.

Staff Time Required To Develop The Proposed Rule

The estimated staff time needed to develop these amendments to Ch. NR 140 is approximately 725 hours.

Entities That May Be Affected By The Proposed Rules

The proposed groundwater standards would apply to all regulated facilities, practices and activities which may impact groundwater quality.

Comparison With Federal Regulations

The United States Environmental Protection Agency (US EPA) establishes health based drinking water maximum contaminant levels (MCLs) and health advisory (HA) levels. Federal MCLs, applicable at public water supply systems, are established based on scientific risk assessments and, in some cases, economic and technological considerations. Federal HAs are developed for different durations of exposure (e.g., one–day, ten–day, and lifetime). Lifetime HAs are developed utilizing established health risk assessment reference doses (RfDs).

The administrative process for developing numerical state groundwater quality standards established in Ch. 160, Stats., requires that DHFS base their recommendations for standards on federal numbers. Federal numbers, as defined in Ch. 160, Stats., include MCLs and established cancer risk levels. In cases where federal numbers have not yet been established for a substance, DHFS utilizes acceptable daily intake/RfD values to develop their recommendations for standards.

Contact Person

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Natural Resources

Subject

Objective of the rule. Changes to chs. NR 406, 407, and 445. The proposed rule changes pertain to implementation of established air permit requirements and hazardous air pollutant emission requirements for sources of emissions of hazardous air contaminants associated with agricultural waste. In addition, possible proposed “clean up” amendments to ch. NR 445 will address minor non–controversial technical corrections.

Policy Analysis

Existing policy on the regulation of air emissions from livestock operations is established in current rules as follows.

Hazardous air pollutant (HAP) emissions from animal feeding operations are regulated under ch. NR 445. This rule establishes ambient air standards for specific HAP, off the source’s property. The acceptable ambient concentration for two HAP typically associated with animal feeding operations, ammonia and hydrogen sulfide, are 418 and 335 micrograms per cubic meter, respectively, both on a 24 hour average basis. Multiple compliance demonstration options are provided in this rule, including demonstrating stack emissions are below table values in the rule, or air dispersion modeling predicting impacts lower than established standards.

Revisions to ch. NR 445, made in July 2004 provide a 36 month exemption, until June 2007, for sources of HAP emissions associated with agricultural waste. After this exemption period, new sources are required to comply upon start up and existing sources have an additional 12 months to comply. The July 2004 revisions allow use of best management practices as approved by the Department of Natural Resources (DNR) as a compliance option.

Also published in July 2004, were revisions to the air permit requirements of chs. NR 406 and 407, providing a parallel 36 month air permit exemption for sources of HAP emissions associated with agricultural waste from July 2004 to July 2007.

The end of the 36 month exemption period was established to coincide with the anticipated completion of studies at the state and federal level which would provide air emission data to support rule applicability determinations and information about the efficacy of best management practices to support development of criteria for the evaluation of best management practice proposals. Information about these studies is provided below.

Siting standards for new and expanding livestock operations were published in ATCP 51 in 2006. Included in these standards are new odor standards. The odor evaluation component of the state study outlined below is intended to support implementation of the odor standards in ATCP 51. The Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for implementation of ATCP 51.

State Study

The Department of Natural Resources (DNR) is engaged in a cooperative project to evaluate air emissions and best management practices for the control of hazardous air pollutant emissions from the handling of agricultural waste.

The project includes ambient air monitoring for hydrogen sulfide and ammonia as well as odor evaluation near several dairy operations, installation of grant–funded improvements, and ambient air monitoring to evaluate the impact of the improvements in controlling hydrogen sulfide and ammonia emissions. Partners in this project include DATCP, USDA Natural Resources Conservation Service (USDA NRCS), Wisconsin Agricultural Stewardship Initiative, Wisconsin Farm Bureau Federation, Dairy Business Association, Professional Dairy Producers of Wisconsin, University of Wisconsin–Platteville Pioneer Farm, and the University of Wisconsin Discovery Farms. Funding for this project is provided by a USDA NRCS Conservation Innovation Grant, along with state funds from DNR and DATCP. Field work began in 2006, later than anticipated due to protracted negotiations. The final report is due July 2008. Note, monitoring of air emissions associated with landspreading of agricultural waste is not included in this study.

Federal Study

US EPA has initiated a national two–year program to monitor and evaluate air emissions from animal feeding operations. Field work began in late 2006, later than originally anticipated by DNR. Within 18 months after the study ends, US EPA will evaluate the data and publish air emission–estimating methods for animal feeding operations (by mid–2010). These methods will allow owners to estimate air emissions from their animal feeding operations and comply with applicable federal regulatory requirements in the Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act, and the Emergency Planning and Community Right–to–Know Act. Note, monitoring of air emissions associated with landspreading of agricultural waste is not included in this study.

As noted above, the DNR anticipated obtaining data from these studies in time to support implementation of the July 2004 rule revisions. Lacking these study results, the DNR currently does not have as much information as it intended to form a sound basis for decisions on rule applicability and criteria for evaluation of best management practice proposals. In light of this, the proposed rule changes are necessary to ensure appropriate implementation of air permit requirements and hazardous air pollutant emission requirements for new and existing sources of emissions of hazardous air contaminants associated with agricultural waste.

Possible “clean up” amendments to ch. NR 445 are necessary to address minor non–controversial technical corrections.

New Policy, Alternative Policies

The DNR does not anticipate changes to underlying policy related to air permit requirements and hazardous air pollutant emission requirements for sources of emissions of hazardous air contaminants associated with agricultural waste. However, the proposed changes will affect the manner or timeframe in which existing requirements are implemented.

The DNR does not anticipate that the possible “clean up” amendments will result in any policy changes.

Statutory Authority

Sections 285.11(1), 285.13 and 285.17, Stats.

Staff Time Required To Develop The Proposed Rule

214 hours DNR staff time.

Entities That May Be Affected By The Proposed Rules

Entities likely to be impacted or interested include owners, operators, and neighbors of animal feeding operations; agriculture industry advocacy organizations; environmental advocacy organizations; and Wisconsin Department of Agriculture, Trade, and Consumer Protection.

Comparison With Federal Regulations

Existing Federal Regulations

Under the federal Clean Air Act, new and existing major stationary sources of federally regulated air pollutant emissions are subject to federal air permit requirements. Included are permit requirements under the federal “Prevention of Significant Deterioration” and “Non–Attainment Area” New Source Review programs, along with the applicable requirements for “Best Available Control Technology”, and “Lowest Achievable Emission Rate” technology and offsets, respectively. Emissions associated with animal feeding operations are not categorically exempt from these requirements.

Under the federal Clean Air Act, 188 hazardous air pollutants are regulated through National Emission Standards for Hazardous Air Pollutants (NESHAPs) established by industry sector. No such standards have been established specifically for animal feeding operations. Furthermore, ammonia and hydrogen sulfide, two air pollutants associated with animal feeding operations, are not regulated as federal hazardous air pollutants under the Clean Air Act.

Hazardous air pollutants associated with animal feeding operations are regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act, and the federal Emergency Planning and Community Right–to–Know Act. These federal regulations include reporting requirements for releases of hazardous air pollutants to the air.

As noted in an August 2005 US EPA press release, US EPA began to realize in the late 1990’s that it didn’t have sufficient air emissions data to implement federal Clean Air Act requirements for animal feeding operations. To resolve the situation, US EPA began discussions with animal feeding operation owners in 2001. These discussions led to a January 31, 2005 EPA Federal Register notice offering individual animal feeding operations an opportunity to voluntarily sign a consent agreement committing animal feeding operations to participate in a nationwide air emission monitoring study, pay penalties, and achieve full compliance the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Emergency Planning and

Community Right–to–Know Act, within the timeframes established in the consent agreement. In return, EPA provides limited amnesty from enforcement action during the term of the agreement.

The DNR is not aware of any new or proposed federal regulations pertaining to air emissions animal feeding operations.

Existing State Regulations

The federal air permit requirements described above are incorporated into state air permit rules in chs. NR 405, 406, and 407. In addition, chs. NR 406 and 407 include air permit requirements for minor sources. Emissions associated with animal feeding operations are not categorically exempt from these requirements, however the revisions to chs. NR 406 and 407 published in July 2004 established an exemption period ending in July 2007 for sources of hazardous air emissions associated with agricultural waste.

Hazardous air pollutant emissions from animal feeding operations are regulated under ch. NR 445. This rule establishes ambient air standards for specific hazardous air pollutants, off the source’s property. The acceptable ambient concentration for two pollutants that are typically associated with animal feeding operations, ammonia and hydrogen sulfide, are 418 and 335 micrograms per cubic meter, respectively, both on a 24 hour average basis. As noted above, ammonia and hydrogen sulfide are not regulated as federal hazardous air pollutants.

Similar to federal reporting requirements, state reporting requirements include the air spill reporting requirements in ch. NR 445 and the annual air emission reporting requirements of ch. NR 438. Air emissions from animal feeding operations are not categorically exempt from these reporting requirements.

The proposed changes to chs. NR 406, 407, and 445, pertain to implementation of established state air permit requirements and state hazardous air pollutant emission requirements for sources of emissions of hazardous air contaminants associated with agricultural waste. The proposed changes will affect the manner in which state and federal regulations differ, but are not expected to resolve the existing differences.

The possible proposed “clean up” amendments to ch. NR 445 will address minor non–controversial technical corrections. No significant changes in the differences between existing state and federal regulations are anticipated from the possible proposed “clean up” amendments.

Contact

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Natural Resources

Subject

Objective of the rule. Modify existing procedures and possibly existing exemptions in Chapter NR 500, Wis. Adm. Code to better manage accumulated sediment in detention structures required by the Clean Water Act (CWA).

Policy Analysis

The volume of sediment accumulating in detention structures and requiring sound management is expected to

increase markedly as the storage capacity in existing detention structures is exhausted and as more detention structures are installed. More sediment detention structures are coming on line due to broader requirements for stormwater management in the CWA. Accumulated sediment is a solid waste and must be managed in a manner that complies with Chapter NR 500, Wis. Adm. Code. Therefore, there is an anticipated increase in the Waste and Materials Management program's workload and a need to maintain consistency in sediment management practices.

The department has regulatory responsibility yet existing review procedures are not defined and no adequate guidelines exist. The department would like to take a proactive approach in this matter. Alternatives include: 1) allow case-by-case review by a wide range of reviewers without a consistent regulatory framework, 2) provide a template for complete self-regulation of accumulated sediments, 3) provide a mechanism for the full review and approval for all management approaches for accumulated sediment, or 4) provide a regulatory structure for sediment management with appropriate safeguards based on self-regulation combined with targeted use of staff resources.

Statutory Authority

Chapter 289, Wis. Stats.

Staff Time Required To Develop The Proposed Rule

Approximately 500 hours of staff time will be required to complete the rule revision.

Comparison With Federal Regulations

There are no comparable federal regulations pertaining to the management of accumulated sediment.

Entities That May Be Affected By The Proposed Rules

The parties most affected by the proposed rule changes include those regulatory authorities responsible for administering stormwater ordinances, county and local units of government and municipalities with sediment structures, developers of housing, commercial or industrial sites, owners of industrial site or health care parking lots, environmental groups, consultants and interested citizens.

The rule revisions will be developed with input from affected stakeholders. A Technical Advisory Committee (TAC) would include representatives from some or all of the stakeholders cited above.

Contact

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Submittal of rules to legislative council clearinghouse

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

Health and Family Services

On April 27, 2007 the Department of Health and Family Services submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rules will revise chs. HFS 83, 88, 89, 132, and 134 to require community-based residential facilities, adult family homes, residential care apartment complexes, nursing homes, and facilities for the developmentally disabled to provide, to the Department, information necessary to determine the facilities' compliance with s. 55.14, Stats., relating to involuntary administration of psychotropic drugs under s. 55.14, Stats.

Agency Procedure for Promulgation

A public hearing is required; however, a public hearing has not yet been scheduled for this proposed rule.

Contact Person

For substantive questions on rules, contact:

Otis Woods, Administrator
Department of Health and Family Services
Division of Quality Assurance
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For small business considerations and rulemaking considerations, contact:

Rosie Greer
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greerrj@dhfs.state.wi.us

Health and Family Services

On April 27, 2007 the Department of Health and Family

Services submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rules will revise ch. HFS 107 relating to prior authorization of dental services to correct an error.

Section 441.56 of Title 42 of the Code of Federal Regulations specifies the procedures and tests required to provide early and periodic screening, diagnosis and treatment (EPSDT) services to recipients.

This revision will assist the state in complying with the requirements of that provision, by specifying more clearly that the state's intent is to only cover certain services required as a result of a screening, as described in that provision. The provision of dental services to Medicaid recipients is described in 42 CFR s. 440.100. The state regulations are currently in conformance with that provision. This revision will not change that conformance.

Agency Procedure for Promulgation

A public hearing is required. The Department anticipates holding at least one public hearing which will be published in the Wisconsin Administrative Register and on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov>

Contact Person

For substantive questions on rules, contact:

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Rule–making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 07–037]

[Reprinted from 4/30/07 Register]

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on proposed amendments to chapters ATCP 60, 69, 70, 71, 75, 77, 80, 81, 82 and 85, Wis. Adm. Code, relating to food and dairy license and reinspection fees.

DATCP will hold three public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Monday, June 11, 2007, for additional written comments. Comments may be sent to the Division of Food Safety at the address below, by email to debbie.mazanec@datcp.state.wi.us, or online by using the State of Wisconsin's Administrative Rules website at: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4712 or emailing debbie.mazanec@datcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to the State of Wisconsin's Administrative Rules website at:

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

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

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by May 9, 2007, by writing to Deb Mazanec, Division of Food Safety, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4712. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearing Dates and Locations:

Tuesday, May 15, 2007

10:00 a.m. to 1:00 p.m.

State of Wisconsin Office Building, Room 105

718 W. Clairemont Avenue

Eau Claire, WI 54701

Wednesday, May 16, 2007

10:00 a.m. to 1:00 p.m.

Appleton Public Library, Room C

225 N. Oneida Street

Appleton, WI 54911

Tuesday, May 22, 2007

10:00 a.m. to 1:00 p.m.

Dept. of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room (CR–106)

Madison, Wisconsin, 53718–6777

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

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) administers Wisconsin's dairy and food safety program. The program is funded, in major part, by dairy and food license fees. This rule increases current license fees in order to address an imminent deficit in the food safety program revenue account.

Statutory Authority

Statutory authority: 93.07 (1), 93.09 (10), 93.12 (7), 97.17 (4), 97.175 (2), 97.20 (2c) (b), (2g) (b), (2n) (b), (2w) and (4), 97.21 (4m) and (6), 97.22 (2) (b), (4) (am) and (8), 97.27 (3m) and (5), 97.29 (3) (am), (cm) and (5), 97.30 (3m) and (5), and 98.146 (4), Stats.

Statutes interpreted: 93.09, 93.12, 97.17, 97.175, 97.20, 97.21, 97.22, 97.27, 97.29, 97.30 and 98.146 (4), Stats.

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules needed to implement laws under its jurisdiction. DATCP also has specific authority, under the provisions cited above, to establish dairy and food license and reinspection fees.

Rule Content

This rule increases current license and reinspection fees for dairy and food businesses, as shown below. DATCP plans to adopt and publish this rule before May 1, 2008, but fee increases will first apply to fees that are due on July 1, 2008.

Entity	Current Fee(s)	Proposed Fee(s)
Dairy Farm	\$24 annual license fee (paid by dairy plant operator)	\$32
	\$24 or \$48 reinspection fee (paid by dairy plant operator if reinspection is required)	\$32 or \$64
Dairy Plant	Annual license fee (calculations include an increase in the basic license fee from \$96 to \$129) \$699 or \$879 for grade A processing plant (based on size)	\$937 or \$1,178
	\$397 for grade A receiving station	\$532
	\$96 for grade A transfer station	\$129

Entity	Current Fee(s)	Proposed Fee(s)
	\$96 to \$421 for grade B processing plant (based on size)	\$129 or \$565
	\$96 for grade B receiving station or transfer station	\$129
	Grade A milk procurement fee: 0.96 cent per 100 lbs.	1.081 cent per 100 lbs. (for payments due beginning July 1, 2008)
	Grade B milk procurement fee: 0.2 cent per 100 lbs.	No change
	Reinspection fee: \$203 or \$246 for grade A processing plant	\$336 or \$394
	\$221 for grade B processing plant	\$360
	\$122 for grade A receiving station	\$229
	\$48 for grade B receiving station or transfer station	\$64
	Butter and cheese grading fee: 1.09 cents per 100 lbs. of product	1.5 cents per 100 lbs. of product
Food Processing Plant	\$78–\$685 annual license fee (based on size and type)	\$105 – \$918
	\$261 canning surcharge for canning plants with annual production of 25,000 or more	\$350
	\$49–\$431 reinspection fee (based on size and type)	\$66 – \$578
Food Warehouse	\$65–\$261 annual license fee (based on size and type)	\$87–\$350
	\$92–\$246 reinspection fee (based on size and type)	\$123 – \$330
Milk Distributor	\$60 annual license fee per facility	\$80
	\$25 reinspection fee per facility	\$34

Entity	Current Fee(s)	Proposed Fee(s)
Retail Food Store	\$37–\$562 annual license fee (based on size and type)	\$50–\$753
	\$74–\$369 reinspection fee (based on size and type)	\$99 – \$494
Dairy, Food or Water Testing Lab	\$336 annual lab certification fee for each dairy or food test (other than milk drug residue screening)	\$450
	\$276 annual lab certification fee for each water test	\$370
	\$25 annual certification fee for each dairy or food analyst (other than milk drug residue screening analyst)	\$34
	\$50–\$500 initial fee and \$25–\$50 annual renewal fee for lab performing milk drug residue screening	\$67–\$670 initial fee \$34–\$67 annual renewal fee
	\$25 initial evaluation fee for milk drug residue screening analysts (if more than 3 per lab)	\$34
Bulk Milk Tanker	\$36 annual bulk milk tanker license fee	\$48
	\$36 bulk milk tanker reinspection fee	\$48
	\$48 bulk milk weigher & sampler license fee (2-year license)	\$64
	\$48 bulk milk weigher and sampler reinspection fee	\$64
Butter-maker or Cheese-maker	\$60 license fee (2-year license)	\$80
Butter or Cheese Grader	\$60 license fee (2-year license)	\$80

This rule does not affect any of the following:

- Fees that DATCP charges for certain services, such as review of food processing equipment plans, or the testing, timing and sealing of pasteurizers. DATCP is authorized to charge fees for such services in order to cover its cost of providing the services. DATCP may adjust these service fees by written notice, in order to keep fees consistent with service costs.

- License fees for milk and cream testers. DATCP is not authorized to adjust these fees by rule. Milk and cream testers

currently pay a license fee of \$50 (for a 2–year license) and a reinspection fee of \$25.

- License fees for meat establishments. Meat inspection programs are funded by a combination of federal dollars and matching state GPR dollars. Under federal law, states must match federal dollars with state GPR dollars, not license fees.

Fiscal Estimate

State Fiscal Effect

This rule will increase food safety program revenues by approximately \$994,000 per year, beginning in FY 2008. The increase is needed to offset a projected deficit in DATCP’s food safety program revenue account beginning in FY 2007. A complete fiscal estimate is attached.

Wisconsin’s food safety program is funded by a combination of general tax dollars (GPR) and program revenue from license fees (PR). In 1991, license fees funded about 40% of program costs. The 1995–97 biennial budget act reduced the GPR funding share, so that PR funded about 50% of program costs. Subsequent state budgets further reduced the GPR funding share, so that PR now funds about 60% of the food safety budget.

Recent state budgets have lapsed a substantial amount of food safety license fee revenue to the state general fund (to help remedy state budget deficits). At the same time, DATCP has experienced a modest increase in operating costs. DATCP proposed a license fee increase in 2005, but was forced to withdraw a large share of that fee increase proposal. As a result, DATCP projects a substantial food safety budget deficit beginning in FY 2007.

DATCP is working to deliver effective food safety protection as efficiently as possible. For example:

DATCP has reduced its food and dairy staff by approximately 17% since 1990 (from 118 to 98 staff). Staffing trends fairly reflect changes in the food and dairy industry, including a reduction in dairy farm numbers and increased delegation of retail food regulation to cooperating local governments. While food safety staffing needs have declined in some traditional areas, they are growing in other areas.

DATCP works with local governments to license and inspect retail food establishments. Thirty–four local entities license and inspect on behalf of DATCP, compared to 15 in 1997 (local participation is voluntary). Local entities now license and inspect 4,600 retail food establishments. DATCP licenses and inspects the remaining 4,200 establishments.

DATCP is working to reform national dairy regulations, which impose rigid Grade A inspection frequency requirements. DATCP is pursuing a more flexible, risk–based inspection system that could reduce inspection costs. In the meantime, Wisconsin must comply with current inspection mandates in order to ship milk and fluid milk products in interstate commerce.

DATCP and the Wisconsin Department of Health and Family Services (DHFS) have eliminated duplicate licensing and inspection of grocery stores, restaurants, and combination grocery–restaurants. DATCP and DHFS have adopted uniform rules for grocery stores and restaurants, based on the federal Model Food Code.

Local Fiscal Effect

DATCP currently provides administrative support to local governments that license and inspect retail food establishments as agents of DATCP. Local governments establish their own license fees, and reimburse DATCP for administrative services costs. The reimbursement amount equals 10% of the license fees that DATCP would charge local

license holders, if DATCP licensed them directly. An increase in DATCP license fees therefore increases local reimbursement payments (current payments do not fully compensate DATCP for its costs).

In FY 2006, local governments made a total of \$58,000 in reimbursement payments. If DATCP adopts the fee increases proposed in this rule, the reimbursement rate will remain at 10%, but the total reimbursement amount will increase to approximately \$76,500. This rule thus increases local costs by approximately \$18,500 (statewide total). Local governments can (and likely will) pass this increased cost on to retail food businesses. Local governments can set license fees to recover up to 100% of their reasonable operating costs.

Business Impact

This rule affects all milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy and food testing laboratories, milk haulers, buttermakers, cheesemakers, and butter and cheese graders licensed by the department. Many of these businesses are “small businesses” as defined in s. 227.114 (1) (a), Stats.

This rule increases annual license fees, reinspection fees and milk procurement fees, beginning with fees that are due in July, 2008. This will increase overall dairy and food industry costs by a combined total of approximately \$994,000 per year. Costs for individual businesses will depend on business size and type. Because of competitive market conditions, it may be difficult for affected businesses to increase prices to recover these costs.

The proposed fee increases will have a significant but not dramatic impact on affected businesses. In the multi–billion dollar dairy and food industries, license fees comprise a relatively small overall share of industry costs. DATCP has worked to maintain a fair and equitable license fee schedule.

Fees are based on actual food safety costs related to each license sector. Fees are also based on business size, food product type, and type of food handling operations. Smaller businesses generally pay lower fees than large businesses, and lower–risk businesses generally pay lower fees than higher–risk businesses.

This rule increases food safety license fees, but does not change other license requirements. This rule requires no additional recordkeeping, and no added professional services to comply. A Business Impact Analysis is attached.

DATCP has not incorporated a small business enforcement policy in this rule, but has adopted a separate rule on that subject (see subch. VII of ch. ATCP 1). DATCP will seek voluntary compliance. However, food and dairy businesses must pay required license fees in order to obtain a license from DATCP.

Federal Regulation

There are no existing or proposed federal regulations related to license fees for food and dairy businesses operating in Wisconsin. However, national regulations such as the Interstate Pasteurized Milk Ordinance (“PMO”) have a significant impact on state program costs. The PMO includes rigid inspection frequency requirements for grade A dairy farms and other grade A dairy operations. Wisconsin must comply with the PMO in order to ship milk and fluid milk products in interstate commerce.

Surrounding State Programs

All of the surrounding states charge license fees to food and dairy businesses. License structure and fees vary between states. Differences in license fees are partly related to differences in general tax dollar support for food and dairy programs in different states.

Minnesota

Minnesota has a license and fee structure that is similar to, but not identical to, Wisconsin's structure:

Dairy Fees – Minnesota

Grade A pasteurizing plant	\$500
Grade A farm	\$50
Grade A farm reinspection fee	\$45
Manufacturing plant	\$140 per pasteurizer unit
Manufactured farm	\$25
Manufactured farm reinspection fee	\$45
Processor assessment	\$.07 per cwt for fluid milk products sold for retail sale in Minnesota
Farm bulk milk pick-up tanker	\$25
Milk procurement fee	\$.0071 per cwt of raw milk purchased

Food Fees – Minnesota

Retail food handler	\$50–\$2,001 based on sales volume
Wholesale food handler	\$57–\$1,502 based on sales volume
Food broker	\$150
Wholesale food processor or manufacturer	\$169–\$2,571 based on sales volume

Michigan

Michigan has a license and fee structure that is similar to, but not identical to, Wisconsin's structure:

Dairy fees – Michigan

Milk plant	\$175
Farms sending milk to plant	\$5–\$10
Receiving or transfer station	\$50
Milk tank truck cleaning facility	\$50
Milk transportation company	\$20
Milk tank truck	\$10
Grade A milk distributor	\$50
Single service container and closure plant	\$50
Bulk milk hauler/sampler	\$40 for 2 years

Food Fees – Michigan

Retail food establishment	\$70
Limited wholesale food processor	\$70
Food warehouse	\$70
Extended retail food establishment	\$175
Wholesale food processor	\$175
Mobile food establishment	\$175
Temporary food establishment	\$28
Bottled water manufacturer	\$25 for each product registered and \$25 for each water dispensing machine

Iowa

Iowa has a license and fee structure that is similar to, but not identical to, Wisconsin's structure:

Dairy Fees – Iowa

Milk plant	\$2,000 for 2 years
Transfer station	\$400 for 2 years
Receiving station	\$400 for 2 years
Milk hauler	\$20 for 2 years
Milk grader	\$20 for 2 years
Bulk milk tanker permit	\$50 for 2 years
Reinspection fee	\$40
Resealing pasteurizer fee	\$100 per reseal
Purchaser of milk fee – Grade A	\$.015 per cwt of raw milk purchased
Purchaser of milk fee – Grade B	\$.005 per cwt of raw milk purchased

Food Fees – Iowa

Mobile food unit or pushcart	\$20
Temporary food establishment	\$25
Food establishment	\$30–\$225 based on sales volume*
Food service establishment	\$50–\$225 based on sales volume*
Food processing plant	\$50–\$250 based on sales volume
Egg handler	\$15–\$250 based on cases sold

*If one establishment must hold both a food establishment and a food service establishment license, each license fee is 75% of the established fee.

Illinois

Illinois has a license and fee structure that is substantially different from the Wisconsin structure:

Dairy Fees – Illinois

Milk plant permit	\$100
Receiving or transfer station	\$50
Cleaning and sanitizing facility	\$50
Milk hauler–sampler	\$25
Milk tank truck	\$25
Certified pasteurizer sealer	\$100

Illinois does not license or charge fees to non–dairy food establishments, except that Illinois charges the following fees to the following establishments:

Food Fees

Salvage Operator	\$100 plus inspection fee based on size
Bottled water manufacturer or distributor	\$150
Egg handlers, distributors and breakers	\$15–\$200 plus inspection fee per case of eggs sold

Notice of Hearing Elections Board

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats., the State Elections Board will hold a public hearing at the offices of the State Elections Board, located at 17 W. Main Street, in the City of Madison, Wisconsin, on the **11th of June, 2007**, at 9:30 a.m., to consider adoption of emergency rule s. ElBd 3.50, relating to charges for voter registration data.

Analysis Prepared by the State Elections Board

Statute(s) interpreted: ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats.

Statutory authority: ss. 5.05 (1) (f) and 227.11 (2) (a)

Related statute(s) or rule(s): s. 19.35, Stats.

Explanation of agency authority: This amended rule interprets ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats. The rule requires that persons who request copies of information or data from the Statewide Voter registration System must pay, for each such copy, a charge calculated under the provisions of the rule according to the schedule established by the rule.

At the present time, the Elections Board is limited, in the fee that it can charge for information provided by the Statewide Voter registration System, to the fee set by s. 19.35 (3), Stats.: “the actual, necessary and direct cost of reproduction and transcription of the record.” In order to recover both the cost of reproduction and the cost of maintaining the list at the state and local level, rather than having its charge be limited to the amount currently provided under the public records law, the Board needs an immediate

rule reflecting both cost components required by the new statute.

The Elections Board finds that under Section 180 of the non–statutory provisions of 2005 Wisconsin Act 451, in subsection (4), the Elections Board may promulgate emergency rules under s. 227.24, Stats., implementing s. 6.36 (6), Stats., as created by Wisconsin Act 451. Notwithstanding s. 227.24 (1) (c) and (2), Stats., emergency rules promulgated under sub. (4) remain in effect until the date on which permanent rules take effect. Notwithstanding s. 227.24 (1) (a) and (3), Stats., the elections board is not required to provide evidence that promulgating a rule under sub. (4) as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under sub. (4).

Plain language analysis: The rule provides the methods by which the Elections Board staff will calculate the pricing to fulfill requests for voter registration data that are contained within the Statewide Voter Registration System.

Summary of, and comparison with, existing or proposed federal regulations: The federal government does not have a voter registration system and does not provide voter registration data for which it could exact a charge.

Comparison with rules in adjacent states: Illinois, Iowa, Michigan and Minnesota all have voter registration data systems which collect a charge for data comparable to Wisconsin’s.

Summary of factual data and analytical methodologies: The legislature has directed the board to calculate a cost of data and record reproduction and a cost of list maintenance and build those costs into its charges for copies of voter registration data and records. Those are the only data or methodology that affects the rule.

Effect on small business: The rule will have no effect on small business or economic impact.

Contact Person

George A. Dunst
 Legal Counsel, State Elections Board
 17 West Main Street, P.O. Box 2973
 Madison, Wisconsin 53701–2973
 Phone 266–0136
 (george.dunst@seb.state.wi.us)

Submission of Comments and Deadline for Submission

Comments should be submitted to:

State Elections Board
 17 West Main Street, P.O. Box 2973
 Madison, Wisconsin 53701–2973
 Phone 266–0136 (elections.state.wi.us)

Deadline for submission: **June 4, 2007.**

Text of Rule

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., the Elections Board hereby creates s. ElBd 3.50, interprets ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats.:

SECTION 1. ElBd 3.50 is created to read:

ElBd 3.50 Charges for voter registration data.

(1) Definitions. As used in this rule:

(a) “Custom report” means a report that is not programmed to run in the Statewide Voter Registration System at the time a request for the report is made.

(b) “Election official” has the same meaning as provided in s. 5.02 (4e), Stats.

(c) “Official registration list” has the same meaning as provided in s. 6.36, Stats.

(d) “Protected information” means any information that is protected from general public disclosure by ss.6.36(1)(b)1.a., and 6.47, Stats.

(e) “Report” means a defined list of related voter registration data records generated from the Statewide Voter Registration System.

(g) “Voter registration data” means data contained in the official registration list.

(h) “Voter registration data record” means a set of related information requested from the official registration list which consists of a core data element and related attributes. A core data element is the basic unit of data that is being requested, including, but not limited to, a voter name, candidate, election official, or address. The related attributes consist of pieces of data associated with that core data element.

(2) The official registration list shall be open to public inspection consistent with the requirements of ss. 6.36, 6.45 through 6.47, and ss. 19.31 through 19.36, Stats.

(3) Any person may obtain, from the official registration list, voter registration data that is not protected information, upon payment of the applicable charges.

(4) The charge for reports in electronic format is a \$25 base fee per report plus \$5 for the first 1,000 voter registration data records in the report, plus \$5 for each additional 1,000 voter registration data records, rounded to the nearest thousand. The maximum charge for an electronic report is \$12,500.

(5) The charge for a paper copy of a report is \$.25 per page, plus the cost of postage and shipping.

(6) Any request for a report or custom report submitted to the State Elections Board shall either be made in writing by

the requester or shall be reduced to writing by the board’s staff. Any request by the board for payment in advance for the report requested shall include a copy of the report request in writing as submitted by the requester or as memorialized by the board’s staff.

(7) Any person may request a copy of the poll list used at an election from the municipal or county clerk who has custody of the list. The cost of a copy of a poll list provided by a municipal or county clerk shall be a fee determined by that clerk not to exceed the cost of reproduction.

(8) The state elections board, its staff, and each municipal or county election official shall take steps to ensure that any protected information contained in the Statewide Voter Registration System, or on a poll list, is not made available for public inspection.

(9) If a request for voter registration data requires a custom report, and the elections board staff determines that it can produce the report, the cost of producing the custom report charged to the requester shall be calculated by the board’s staff on a case–by–case basis and shall include, in addition to the costs articulated in subs. (4) or (5), including any applicable costs of handling and mailing, costs of reproduction, including programming costs; and the costs of maintenance of the SVRS as authorized by s. 6.36 (6), Stats. Requests fulfilled under this subsection are not subject to the maximum charge limitations in sub. (4).

(10) The fees received from requests for voter registration data will remain with the municipality, county, or the State Election Board, whoever produces and provides the report.

Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Notice of Hearing Health and Family Services

(Medical Assistance, Chs. HFS 101–109)

[CR 07–041]

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.45 (10) and 227.11 (2), Stats., and interpreting s. 49.46 (2) (b) 1., Stats., the Wisconsin Department of Health and Family Services proposes to repeal ss. HFS 107.07 (1) (k) and (2) (a) 5. and 107.22 (4) (a) and (b), and to amend ss. HFS 107.07 (2) (a) (intro.), (3) (intro.) and (a) 3., (4) (intro.) and (j) and (4m), and 107.22 (4) (intro.), relating to benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

Hearing Date(s) and Location(s)

Date and Time	Location
June 12, 2007 10:00 a.m. to 12:00 noon	1 West Wilson Street Room B–370 Madison, WI

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

Submission of Comments and Deadline for Submission

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>. The deadline for submitting comments to the Department is 4:30 p.m. on **June 19, 2007**.

Analysis Prepared by the Department of Health and Family Services

The Department is revising rules to clarify circumstances under which the Wisconsin Medicaid program will reimburse providers for orthodontia and certain other services provided to recipients under age 21. In Clearinghouse Rule 05-033, the prior authorization requirement was removed for most procedures that had high rates of approval (greater than 75%). The change was intended to reduce the staff time required for dental offices to process prior authorization requests. The Department did not intend to remove the requirement for prior authorization for orthodontia and other services. In Clearinghouse Rule 05-033, the Department specifically stated that "Procedures where appropriate pricing requires a high degree of clinical knowledge (e.g., orthodontics and TMJ surgery), and procedures with strict time limitations (e.g., dentures) are also proposed to retain prior authorization." The adopted language, however, has been interpreted by at least one dentist to mean that prior authorization is no longer required to provide orthodontia to recipients. This interpretation was upheld by an administrative law judge in an administrative hearing. Because the intent of the Department and the language adopted, as recently interpreted, had opposite effects, the Department intends to revise rules to clarify the Department's intent to require prior authorization for orthodontia and other services provided under early and periodic screening, diagnosis and treatment (EPSDT) services.

A basic concept of the Medicaid program is that services must be medically necessary to be reimbursable. The medical necessity of these services is determined by the Department based on information submitted by the provider. Thus, it is necessary to require prior authorization to determine the appropriateness of providing these services to an individual recipient. Allowing the existing rule language to remain in its present form could require reimbursement for orthodontia that is not medically justified.

The department will first implement these changes in emergency rule that is followed by a substantially identical permanent rule.

Effect on Small Business

The rule changes are being made to correct an error made in Clearinghouse Rule 05-033. The error made in Clearinghouse Rule 05-033 could require reimbursement of orthodontia that is not medically justified. The Department does not expect that the rules will increase costs to dentists.

Small Business Regulatory Coordinator

Rosie Greer
Greerrj@dhfs.state.wi.us
608-266-1279

Fiscal Estimate

The Department is revising rules to clarify circumstances under which the Wisconsin Medicaid program will reimburse providers for orthodontia and certain other services provided to recipients under age 21. In Clearinghouse Rule 05-033, the prior authorization requirement was removed for most procedures that had high rates of approval (greater than 75%). The change was intended to reduce the staff time required for dental offices to process prior authorization requests. The

Department did not intend to remove the requirement for prior authorization for orthodontia and other services. In Clearinghouse Rule 05-033, the Department specifically stated that "Procedures where appropriate pricing requires a high degree of clinical knowledge (e.g., orthodontics and TMJ surgery), and procedures with strict time limitations (e.g., dentures) are also proposed to retain prior authorization." The adopted language, however, has been interpreted by at least one dentist to mean that prior authorization is no longer required to provide orthodontia to recipients. This interpretation was upheld by an administrative law judge in an administrative hearing. Because the intent of the Department and the language adopted, as recently interpreted, had opposite effects, the Department is promulgating rules to revise section s. HFS 107.07 to clarify the Department's intent to require prior authorization for orthodontia and other services provided under early and periodic screening, diagnosis and treatment (EPSDT) services.

A basic concept of the Medicaid program is that services must be medically necessary to be reimbursable. The medical necessity of these services is determined by the Department based on information submitted by the provider. Thus, it is necessary to require prior authorization to determine the appropriateness of providing these services to an individual recipient. Allowing the existing rule language to remain in its present form could require reimbursement for orthodontia that is not medically justified.

The rule will not have a fiscal effect on local government or the private sector. Restoration of prior approval provisions in the dental services section of the Medicaid regulations should result in continued savings to the Medicaid program.

Copies of Rules and Fiscal Estimate

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

Contact Person

Al Matano
Division of Health Care Financing
P.O. Box 309
Madison, WI 53702
608-267-6848 or matana@dhfs.state.wi.us

Notice of Hearing

Natural Resources

(Environmental Protection—Air Pollution Control, Chs. NR 400—)

[CR 07-040]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1), (6) and (16), 285.60 (6), 285.67 and 285.69, Stats., interpreting ss. 227.11 (2) (a) and 285.11 (1) and (6), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 400, 406, 407, 410 and 439, Wis. Adm. Code, relating to construction permits and stack test requirements. The State Implementation Plan developed under s. 285.11 (6), Stats., is also being revised. The Department is proposing to incorporate changes in federal regulations.

Some changes in chs. NR 400 and 407 are updating definitions and other revisions to the federal standards regarding fugitive emissions and permitting standards. Additional changes in chs. NR 406 and 407 clarify when a

construction permit is needed for sources covered under general operation permits. Portable source relocation limitations found in ch. NR 406 will be amended by changing the numerical emission limitations to language limiting the relocation limitations to less than major source thresholds.

Section NR 410.03 will be amended so construction permits can be issued concurrently with operation permits, streamlining the process for minor revisions to those permits. The revision is being made so that the collection of permit fees and the issuance of an operation permit are independent of each other. If fees are not paid, the Department has the ability to revoke a permit or to refer the source to the Department of Justice to collect the fees.

Chapters NR 439 and 462 have different and conflicting stack test requirements for boilers that are subject to national emission standards for hazardous air pollutants, maximum achievable control technology (MACT). The proposed amendment to ch. NR 439 allows boilers subject to that MACT standard to use the testing schedule in ch. NR 462 rather than the current requirements in ch. NR 439.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected: Sources of fugitive emissions may become subject to the federal operation permit program as a result of this rule change. Low emitting dry cleaners, metal cleaners and chrome electroplaters may be excluded from major source permitting requirements as a result of this rule.

b. Description of reporting and bookkeeping procedures required: Facilities subject to federal operation permit requirements must report their compliance status to the Department every six months. Facilities that are not subject to federal operation permit requirements must report their compliance annually.

c. Description of professional skills required: The proposed rule changes does not create any additional need for professional skills than those that are required under current regulations.

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

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

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

June 12, 2007 (Tuesday) at 1:00 p.m.	Room 511, GEF #2 Building 101 South Webster Street Madison
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NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266-2856 or by e-mail at Robert.Eckdale@wisconsin.gov with specific information on

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

Fiscal Estimate

No governmental economic impacts are anticipated.

Copies of Rule and Submission of Comments

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. AM-12-07. Written comments on the proposed rule may be submitted via U.S. mail to Joe Brehm, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to Joseph.Brehm@wisconsin.gov. Comments may be submitted until June 19, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-2856.

Notice of Hearing Revenue [CR 07-027]

NOTICE IS HEREBY GIVEN that, pursuant to and interpreting s. 73.029, Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the amendment and creation of rules relating to electronic funds transfer.

Hearing Information

The hearing will be held at 9:00 A.M. on **Wednesday, May 30, 2007**, in the Events Room (1st floor) of the State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

Analysis Prepared by the Department of Revenue

Statute interpreted: s. 73.029, Stats.

Statutory authority: s. 73.029, Stats.

Explanation of agency authority: Section 73.029, Stats., provides that the department may require electronic funds transfer only by promulgating rules.

Related statute or rule: s. 71.91 (7), Stats.

Plain language analysis: This proposed rule order creates a provision specifying that withholding payments by an employer of the delinquent tax of an employee (also known as wage certification payments) are required to be made by electronic funds transfer (EFT). It also updates notes to provide current contact information for the department's EFT Unit.

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states: The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: Wage certifications are authorized under s. 71.91(7), Stats. The number of wage certification payments received each year number in the tens of thousands. The department has

determined that in order to administer this program in the most cost effective manner, it is necessary to require employers to make wage certification payments electronically.

Analysis and supporting documents used to determine effect on small business: The department provides methods to pay taxes using EFT that occur at no or minimal cost to the payer. In addition, an exception to the requirement to pay electronically for situations where an undue hardship is caused is provided in the rule. Based on this, the department has concluded that this proposed rule order does not have a significant effect on small business.

Anticipated costs incurred by private sector: This proposed rule order does not have a significant fiscal effect on the private sector.

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

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or dkleven@dor.state.wi.us, if you have any questions regarding this proposed rule order.

Submission of comments: Comments may be submitted to the contact person shown below no later than one week after the public hearing on this proposed rule order is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933

Text of Rule

SECTION 1. Tax 1.12 (1), (2), (3) (g), and (4) (a) (intro.) are amended to read:

Tax 1.12 (1). SCOPE. This section applies to any person who is required to or elects to pay or deposit taxes ~~or~~ fees, or other amounts by electronic funds transfer, or "EFT."

Tax 1.12 (2). PURPOSE. The purpose of this section is to specify which taxes ~~and~~ fees, and other amounts are required to be paid or deposited using the EFT payment method, to provide that certain persons not required to use the EFT payment method may elect to do so and to explain the procedures for using EFT.

Tax 1.12 (3) (g). "Payer" means any person who is required to or elects to pay or deposit taxes ~~or~~ fees, or other amounts by electronic funds transfer.

Tax 1.12 (4) (a) (intro.). Except as provided in sub. (11), the department requires a person who owes taxes ~~and~~ fees and other amounts as described in subds. 1. to ~~13-~~ 14. to pay or deposit the taxes ~~and~~ fees, and other amounts using the EFT payment method. The following taxes ~~and~~ fees, and other amounts are included in the EFT payment requirement:

SECTION 2. Tax 1.12 (4) (a) 14. is created to read:

Withholding by an employer of the delinquent tax of an employee under s. 71.91 (7), Stats.

SECTION 3. Tax 1.12 (4) (b) is amended to read:

Tax 1.12 (4) (b). Any person not required to use the EFT payment method under par. (a) may elect to use the EFT

payment method to pay or deposit the taxes ~~or~~ fees, or other amounts specified in par. (a).

Note to revisor: Replace the note at the end of Tax 1.12 (6) (a) with the following:

Note: A request for an EFT registration packet may be made by calling the department's EFT unit at (608) 264-9918; by writing to EFT Unit, Wisconsin Department of Revenue, P.O. Box 8949, Madison WI 53708-8949; or by submitting an online form via the department's website at www.revenue.wi.gov.

SECTION 4. Tax 1.12 (7) (intro.) is amended to read:

Tax 1.12 (7) (intro.). EFT PAYMENT PROCEDURES. EFT payments or deposits shall be credited by the department directly to the payer's tax account or, for amounts described in sub. (4)(a)14., to the employee's delinquent tax account. The payer may use the ACH debit or ACH credit transfer option, or both, as follows:

Note to revisor: Replace the note at the end of Tax 1.12 (7) (a) with the following:

Note: Written requests for department approval of another ACH debit transfer method should be addressed to EFT Unit, Wisconsin Department of Revenue, P.O. Box 8949, Madison WI 53708-8949.

Note to revisor: Replace the note at the end of Tax 1.12 (11) (a) 1. with the following:

Note: Written waiver requests should be addressed to EFT Unit, Wisconsin Department of Revenue, P.O. Box 8949, Madison WI 53708-8949.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

The proposed rule requires that withholding payments by an employer of the delinquent tax of an employee be made using electronic funds transfer. No change is made to filing thresholds or amounts remitted. The rule should have a minimal fiscal impact on taxpayers. It is expected that administrative cost savings will be \$34,000 per year beginning in fiscal year 2009.

Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than June 6, 2007, and will be given the same consideration as testimony presented at the hearing.

Contact Person

Small Businesses:

Tom Ourada
Department of Revenue
Mail Stop 624-A
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933
Telephone (608) 266-8875
E-mail:
tourada@dor.state.wi.us

Others:

Dale Kleven
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933
Telephone (608) 266-8253
E-mail:
dkleven@dor.state.wi.us

Submittal of proposed rules to the legislature

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

Commerce

(CR 07-007)

Chs. Comm 5 and 20, relating to dwelling contractor certification.

Transportation

(CR 06-103)

Ch. Trans 200, relating to specific information signs.

Regulation and Licensing

(CR 06-125)

Chs. RL 4 and 174 to 177, relating to the registration of sanitarians.

Veterans Affairs

(CR 07-022)

Ch. VA 8, relating to the county veterans service officer grant program.

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.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (CR 06-057)

An order affecting A-E 6, relating to land surveyor education and experience requirements.
Effective 6-1-07.

Health and Family Services (CR 05-052)

An order affecting ch. HFS 107, relating to private duty nursing and respiratory care service benefits covered by the Wisconsin medical assistance program.
Effective 7-1-07.

Natural Resources (CR 06-104)

An order affecting ch. NR 17, relating to hound dog

training and trialing on captive wild animals.
Effective 7-1-07.

Natural Resources (CR 06-111)

An order affecting ch. NR 25, relating to commercial fishing open seasons in Lake Michigan for chubs.
Effective 7-1-07.

Public Service Commission (CR 06-106)

An order affecting ch. PSC 135, relating to incorporating recent changes to the federal pipeline safety regulations.
Effective 7-1-07.

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