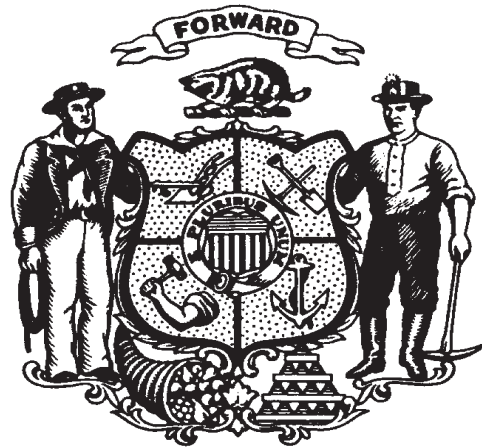


# Wisconsin Administrative Register

No. 621



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## Table of Contents

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<b>Emergency Rules Now in Effect.</b>	<b>Pages 4 to 8</b>
Agriculture, Trade and Consumer Protection:	Rules relating to voluntary certification of firewood dealers.
Commerce:	<u>Licenses, Certifications, etc., Ch. Comm 5</u> Rules relating to licensing of elevator contractors and installers.
	<u>Amusement Rides, Ch. Comm 34</u> Rules relating to amusement ride safety.
	<u>Financial Resources for Businesses and Communities, Chs. Comm 104–131</u> Rules relating to tax credits and exemptions for internet equipment used in the broadband market.
Dentistry Examining Board:	Rules amending the effective date of an emergency rule that took effect on December 29, 2006, relating to anesthesia administration; and delaying the effective date of the permanent rule.
Elections Board:	Rules relating to pricing of voter information available from the Statewide Voter Registration System.
Health and Family Services:	<u>Medical Assistance, Chs. HFS 100—</u> Rules relating to benefits covered by the Wis. Medical Assistance program, and affecting small businesses.
Natural Resources:	<u>Fish and Game, etc., Chs. NR 1—</u> Rules relating to the hook and line harvest of lake sturgeon.
	Rules relating to the 2007 migratory game bird seasons and waterfowl hunting zones.
	<u>Environmental Protection–Water Regulation, Chs. NR 300—</u> Rules relating to general permits for dredging Great Lakes navigable waterways.
	Rules relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.
	<u>Environmental Protection–Air Pollution Control, Chs. NR 400—</u> Rules creating s. <b>NR 462.015</b> , relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business. <b>[First Appearance]</b>
Regulation and Licensing:	Rules creating <b>chs. RL 160 to 163 and 166 to 168</b> , relating to substance abuse professionals. <b>[First Appearance]</b>
Workforce Development:	<u>Workforce Solutions, Chs. DWD 11 to 59</u> Rules relating to child care enrollment underutilization.

**Scope Statements.**

Law Enforcement Standards Board:

**Pages 9 to 10**

Rules affecting chs. LES 1 to 6 and 9, relating to training and education standards and programming for officers who work in the administration of criminal justice.

Workforce Development:

Rules affecting ch. DWD 149, relating to unemployment insurance rules for confidentiality of records.

**Submittal of Rules to Legislative Council Clearinghouse.****Page 11**

Agriculture, Trade and Consumer Protection:

Rules affecting ch. ATCP 21, relating to voluntary certification of firewood dealers.

Commerce:

Rules affecting ch. Comm 34, relating to amusement rides.

Revenue:

Rules affecting chs. Tax 61 and 63, relating to billing term options for Wisconsin Lottery retailers, requirements in the lottery Retailer Performance Program, and voluntary non-disclosure requirements.

Transportation:

Rules affecting ch. Trans 129, relating to motorcycle courses.

Veterans Affairs:

Rules affecting ch. VA 2, relating to the tuition reimbursement grant program.

**Rule-Making Notices.****Pages 12 to 24**

Agriculture, Trade and Consumer Protection:

Hearings to consider rules affecting ch. ATCP 21, relating to voluntary certification of firewood dealers.

Commerce:

Hearing to consider rules affecting ch. Comm 34, relating to amusement rides.

Health and Family Services:

Hearings to consider rules affecting ch. HFS 144, relating to immunization for students.

Revenue:

Hearing to consider rules affecting chs. Tax 61 and 63, relating to billing term options for Wisconsin Lottery retailers, requirements in the lottery Retailer Performance Program, and voluntary non-disclosure requirements.

Transportation:

Hearing to consider rules affecting ch. Trans 129, relating to motorcycle courses.

Veterans Affairs:

Hearing to consider rules affecting ch. VA 2, relating to extending the period for submitting a pre-application for the tuition reimbursement grant program.

**Submittal of Proposed Rules to the Legislature.****Page 25**

Agriculture, Trade and Consumer Protection:

CR 07-006 — Chs. ATCP 60, 69, 77, 80 and 82 – relating to safe production, processing, distribution and sale of milk and dairy products.

Transportation:

CR 07-065 — Ch. Trans 128, relating to the traffic violation and registration program.

**Rule Orders Filed with the Revisor of Statutes Bureau.****Page 26**

Commerce:

CR 07-032 — Ch. Comm 47, relating to the usual and customary cost schedule for PECFA.

Health and Family Services:

CR 07-042 — Chs. HFS 83, 88, 89, 132, and 134, relating to facility reporting of involuntary administration of psychotropic medication and affecting small businesses.

Workforce Development:

CR 07-019 — Chs. DWD 80 and 81, relating to worker's compensation.

CR 07-030 — Ch. DWD 56, relating to child care rates.

CR 07-038 — Chs. DWD 111 and 123, relating to unemployment insurance benefit reports filed by employers.

CR 07-039 — Ch. DWD 130, relating to wages for unemployment insurance benefit purposes.

**Rules Published with this Register and Final Regulatory Flexibility Analyses.****Pages 27 to 28****Sections Affected by Rule Revisions and Corrections.****Page 29****Sections Affected by Revisor's Corrections Not Published.****Page 30****Executive Orders.****Page 31****Public Notices.****Page 32**

Workforce Development:

Chapter DWD 40 Appendix C – Schedule for Child Support Obligation of Low-Income Payers

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## Emergency Rules Now in Effect

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*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](http://www.legis.state.wi.us/rsb/code).*

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### Agriculture, Trade & Consumer Protection

Rules adopted creating **s. ATCP 21.20**, relating to voluntary certification of firewood dealers.

#### Finding of Emergency

(1) The Wisconsin department of natural resources ("DNR") has adopted rules, under s. NR 45.04 (1) (g), to restrict the movement of firewood into Wisconsin state parks. The DNR rules are designed to prevent the spread of exotic pests, such as Emerald Ash Borer, that may inhabit firewood. The DNR rules prohibit the possession of firewood in a state park unless the firewood comes from within 50 miles from the park, or from a more distant source approved by the Department of Agriculture, Trade and Consumer Protection ("DATCP").

(2) The DNR rules effectively prohibit a firewood dealer located more than 50 miles from a state park from supplying firewood to that state park, except as authorized by DATCP. That prohibition may work a substantial hardship on firewood dealers who normally supply significant quantities of firewood to parks located more than 50 miles away.

(3) This rule creates a voluntary certification program for firewood dealers who obtain their wood from Wisconsin and agree to treat the wood for potential pests such as Emerald Ash Borer. Certified firewood dealers may supply firewood to Wisconsin state parks, even though they are located more than 50 miles from those parks.

(4) DATCP is adopting this rule as a temporary emergency rule, pending completion of "permanent" rulemaking proceedings. DATCP cannot complete permanent rules in

time for the 2007 camping season. Without this emergency rule, certain firewood dealers may experience unnecessary financial hardship during the 2007 camping season, because they will be precluded from supplying firewood to state parks more than 50 miles away. This emergency rule allows those firewood dealers to continue supplying firewood to more distant state parks, subject to sourcing and treatment requirements that are reasonably designed to prevent the spread of serious exotic pests.

**Publication Date:** May 22, 2007  
**Effective Date:** May 22, 2007  
**Expiration Date:** September 19, 2007  
**Hearing Date:** June 26, 2007

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### Commerce

#### (Licenses, Certifications, etc., Ch. Comm 5)

Rules adopted revising **ch. Comm 5**, relating to licensing of elevator contractors and installers.

#### Exemption From Finding of Emergency

Under the nonstatutory provisions of 2005 Wis. Act 456, the Department of Commerce was directed to issue emergency rules that implement provisions of the Act. The Act specifically states: "Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of commerce is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection."

The Act mandates the licensing of elevator contractors and installers. Under the Act no person may engage in the business of installing or servicing conveyances or working on a conveyance unless licensed as of June 1, 2007. These emergency rules are being adopted in order to provide the elevator industry the ability to comply with licensing aspects of the Act and continue working until permanent rules are implemented.

**Publication Date:** June 1, 2007  
**Effective Date:** June 1, 2007  
**Expiration Date:** October 29, 2007  
**Hearing Date:** June 27, 2007

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### Commerce

#### (Amusement Rides, Ch. Comm 34)

Rule adopted creating **s. Comm 34.22 (5m)**, relating to amusement ride safety.

#### Finding of Emergency

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

1. An amusement ride fatality occurred in Wisconsin on July 14, 2007. The ride involved the field attachment of passengers who don harnesses and then are elevated off the ground.

2. Although no mechanical or equipment failure contributed to the incident, attachment and connection practices of the operators did not incorporate safety practices used on some similar rides in the industry.

3. The department recognizes that without promulgating this emergency rule, there could be confusion in what constitutes a recognized safe practice for the field attachment or connection of harnessed passengers on similar amusement rides. The department believes clarifying the code will promote safety.

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

**Publication Date:** August 13, 2007  
**Effective Date:** August 13, 2007  
**Expiration Date:** January 10, 2008  
**Hearing Date:** October 15, 2007  
 [See Notice this Register]

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### 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

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### Dentistry Examining Board

Rule adopted amending the effective date of CR 04–095, by amending the emergency rule that took effect on December 29, 2006, relating to the requirements for administering the office facilities and equipment for safe and effective administration and the applicable standards of care, and to provide for reporting of adverse occurrences related to anesthesia administration.

#### Finding of Emergency

The board has made a finding of emergency. The board finds that failure to delay the effective date of CR04–095, from July 1, 2007 to November 1, 2007 will create a danger to the public health, safety and welfare. The extra four months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients. The rules created a course requirement for receiving a conscious sedation permit that did not exist. Courses have and are being developed to meet this requirement. By November 1, 2007, the course will have been available to enough dentists to ensure the continuation of the use of conscious sedation.

**Publication Date:** June 24, 2007  
**Effective Date:** July 1, 2007  
**Expiration Date:** November 28, 2007  
**Hearing Date:** July 11, 2007

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### Elections Board

Rules adopted creating **s. EIBd 3.50**, relating to pricing of voter information available from the Statewide Voter Registration System.

#### Exemption From Finding of Emergency

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 subsection (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 subsection (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 subsection (4).

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 from the Statewide Voter registration System must pay, for each such copy, a charge calculated under the provisions of 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.

**Publication Date:** May 12, 2007  
**Effective Date:** May 12, 2007  
**Expiration Date:** See section 180 (4), 2005 Wis. Act 451  
**Hearing Date:** June 11, 2007

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**Health and Family Services  
(Medical Assistance, Chs. HFS 100—)**

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

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**Natural Resources (2)  
(Fish and Game, etc., Chs. NR 1—)**

1. Rules adopted amending **s. NR 20.20**, relating to the hook and line harvest of lake sturgeon.

**Finding of Emergency**

The Department of Natural Resources finds that an emergency exists and rules are necessary to prevent excessive harvest of lake sturgeon from the inland waters of Wisconsin during the 2007 hook and line season.

**Publication Date:** July 23, 2007  
**Effective Date:** July 23, 2007  
**Expiration Date:** December 20, 2007  
**Hearing Date:** August 13, 2007

2. Rules adopted amending **ss. NR 10.01 (1) (v), 10.12 (5) (d) and 10.15 (6); and to repeal and recreate s. NR 10.01 (1) (b), (g) and (u)**, relating to the 2007 migratory game bird seasons and waterfowl hunting zones.

**Finding of Emergency**

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

**Publication Date:** August 30, 2007  
**Effective Date:** August 30, 2007  
**Expiration Date:** January 27, 2008  
**Hearing Date:** October 19, 2007

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**Natural Resources (2)  
(Environmental Protection – Water  
Regulation, Chs. NR 300–)**

1. Rules adopted revising **ch. NR 345**, relating to general permits for dredging in Great Lakes navigable waterways.



### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits for dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove algae, mussels, dead fish and similar large plant and animal nuisance deposits. Without emergency rules to create general permits, all dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2007 summer season, with specific standards for operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits.

**Publication Date:** June 10, 2007  
**Effective Date:** June 10, 2007  
**Expiration Date:** November 7, 2007  
**Hearing Date:** July 10, 2007

2. Rules adopted revising **chs. NR 320, 323, 328, 329, 341, 343 and 345**, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits standards that require decontamination of equipment for invasive species and viruses. Without emergency rules to create new general permit standards, any condition imposed would be limited to individual permits only with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits standards to be in effect for the 2007 summer season, with specific standards that require decontamination of equipment for invasive species and viruses.

In addition, 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.

**Publication Date:** July 12, 2007  
**Effective Date:** July 12, 2007  
**Expiration Date:** December 9, 2007  
**Hearing Date:** August 13, 2007

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## Natural Resources (Environmental Protection – Air Pollution Control, Chs. NR 400–)

Rules adopted creating **s. NR 462.015**, relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business.

### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Preservation of the public welfare necessitates putting the rule into effect prior to the time that it would take if the department complied with the normal procedures. Federal regulations that are the basis for ch. 462, Wis. Adm. Code, were vacated on July 30, 2007 by the U.S. Court of Appeals. Both the vacated federal regulations and ch. NR 462 contain a date for compliance of September 13, 2007. This order is designed to bring state rules into conformity with the court-ordered vacatur of the federal regulations. Normal rule-making procedures will not allow implementation of ch. NR 462 to be stayed before September 13, 2007.

**Publication Date:** September 13, 2007  
**Effective Date:** September 13, 2007  
**Expiration Date:** February 10, 2008

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## Regulation and Licensing

Rules adopted creating **chs. RL 160, 161, 162, 163, 166, 167, and 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”.

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. Please refer to the “Summary of factual data and analytical methodologies” section and the section on “Analysis and supporting documentation used to determine effect on small business or in preparation of economic impact report.”

Chapter RL 160 is being created to include definitions of terms that are used in subch. VII of ch. 440, Stats., and in chs. RL 160 to 167. The proposed rules include definitions for “accredited,” “assessment,” “behavioral science field,” “CEH,” “clinical substance abuse counselor,” “clinical supervision,” “clinical supervisor,” “clinical supervisor-in-training,” “comprehensive program,” “core functions,” “credential,” “department,” “DSM,” “hour,” “independent clinical supervisor,” “intermediate clinical supervisor,” “patient,” “practice dimensions,” “prevention,” “prevention domains,” “prevention specialist,” “prevention specialist-in-training,” “substance,” “substance abuse counselor,” “substance abuse counselor-in-training,” “substance use disorder” and “transdisciplinary foundations.”

Chapter RL 161 is being created to identify the requirements and procedures for submitting applications for licenses.

Chapter RL 162 is being created to identify the restrictions and minimum requirements for supervision of counselors by clinical supervisors.

Chapter 163 is being created to identify the scope and restrictions on the practice of the credential holders.

Chapter RL 166 is being created to identify the approval process and educational requirements for educational coursework and continuing education opportunities.

Chapter RL 167 is being created to require credential holders to have liability insurance in effect.

Chapter RL 168 is being created to identify the requirements for continuing education.

**Publication Date:** September 8, 2007  
**Effective Date:** September 10, 2007  
**Expiration Date:** February 7, 2008

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

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  
**Hearing Date:** June 20, 2007  
**Extension Through:** October 27, 2007

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## Scope Statements

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### Law Enforcement Standards Board

#### Subject

The rules affect chs. LES 1 to 6 and 9, relating to training and education standards and programming for officers who work in the administration of criminal justice.

#### Objective of the Rule

The objective of this proposal is to bring the LESB's administrative rules into better conformity with recent developments in LESB policies and to address issues arising out of the LESB's experience in administering the existing rules. The last major substantive revisions of the LESB's administrative rules occurred in 1999.

The LESB's administrative rules are located at Wis. Admin. Code chs. LES 1–6 and 9. Chapter 1 is titled "General" and contains general provisions and definitions of terms used throughout the rules. Chapter 2 is titled "Recruitment qualifications" and identifies minimum qualifications for employment or certification as a law enforcement, tribal law enforcement, jail, or secure detention officer. Chapter 3 is titled "Training standards" and establishes instructional goals & desired program outcomes for preparatory training in the field of law enforcement. Chapter 4 is titled "Certifications" and sets forth the procedures and requirements for law enforcement training schools and instructors to be certified by the LESB. Chapter 5 is titled "Grants" and addresses state reimbursement of expenses incurred by political subdivisions of the state in connection with law enforcement preparatory training. Chapter 6 is titled "Decertifications" and provides standards and procedures, including hearing procedures, for decertifying law enforcement officers. Chapter 9 is titled "By-laws of the Wisconsin Law Enforcement Standards Board" and establishes the LESB's internal rules regarding its own membership, officers, meetings, committees and staffing. Creation of other chapters is not anticipated but may be considered in light of the specific needs for proposed changes.

#### Policy Analysis

The LESB sets minimum employment, education, and training standards for law enforcement, tribal law enforcement, jail, and secure detention officers. It certifies persons who meet the standards as qualified to be officers. It certifies persons who qualify to deliver and instruct LESB-approved curricula. The LESB consults with other government agencies regarding the development of training schools and courses, conducts research to improve law enforcement and jail administration and performance, and evaluates governmental units' compliance with standards. Its 15 Governor-appointed members serve staggered 4 year terms. The law enforcement representatives must include at least one sheriff and one chief of police. The public member cannot be employed in law enforcement. The LESB is attached, for administrative and staffing purposes, to the Wisconsin Department of Justice Training and Standards Bureau. See Wis. Stat. §§ 15.03, 15.255, and 165.86(1)(a). The Bureau will develop specific rule proposals for the LESB's consideration. A comprehensive description of

LESB & Bureau programming and resources is available at <http://www.wilenet.org>.

Since the last major revision of these administrative rules in 1999, the LESB and the Bureau—as a result of their ongoing work in initiating, designing, developing, implementing, maintaining, and supervising criminal justice education and training programs—have identified numerous needs for additions, revisions and clarifications in those rules. In particular, the evolution of strategies and practices in the criminal justice system in recent years has led to significant changes in law enforcement training and professional development. As part of that process, the LESB, in December 2003, expanded the basic training curriculum for law enforcement officers from 400 hours to 520 hours and revised that curriculum to integrate more sophisticated and up-to-date methods of scenario-based instruction and learning assessment. Recent actions by the LESB have also created new curricula for instructor development and a new category of certification for Master Instructors. In addition, accumulated practical experience in administering the programs for certification and decertification of law enforcement officers and training instructors has enabled the LESB and the Bureau to identify needs for updated standards and procedures.

This proposal to revise and update the LESB's rules is necessary in order to ensure consistency with the LESB's new policies and accumulated experience, so as to effectively provide the skills, knowledge & competencies needed in Wisconsin's law enforcement system. The alternative of not revising these rules would result in the continued use of existing rules that do not reflect more recent developments in LESB policies and practices.

#### Statutory Authority

The LESB's substantive authority over the subjects covered by the proposed rules is supplied throughout s. 165.85, Stats. The specific statutory authority to promulgate the proposed rules is supplied by s. 165.85 (3) (a) and (j), Stats..

#### Entities Affected by the Rule

The LESB's rules affect all criminal justice agencies that employ certified law enforcement, jail, and/or secure detention officers; academies and schools using LESB-approved curricula that employ or utilize instructors in LESB approved courses or content for recruit, specialized and advanced training; and individuals seeking to become certified law enforcement, jail, and/or secure detention officers or certified law enforcement instructors. LESB training programs administered by the Bureau annually impact about 626 law enforcement agencies; 16,900 law enforcement, jail, and secure detention officers; 24 certified training academies; and 2,231 certified instructors.

#### Comparison with Federal Regulations

Employment, education, and training standards for law enforcement personnel are governed at the state level. There are no federal regulations regarding law enforcement, jail, or secure detention officer training, qualification, certification or credentialing. There is no existing or proposed federal regulation that has any bearing upon the proposed rules.

### **Estimate of Time Needed to Develop the Rule**

It is estimated that state employees will spend 180 hours on the rulemaking process, including research, drafting and conducting at least one public hearing.

## **Workforce Development**

### **Subject**

The rule affects ch. DWD 149, relating to unemployment insurance rules for confidentiality of records.

### **Policy Analysis**

Unemployment insurance (UI) records contain sensitive information for workers and employers, including Social Security numbers, wage information, and tax information. For appellate cases, UI records also may contain trade secrets, financial impacts, customer lists, personal medical information, or embarrassing evidence (such as drug tests, alcohol and other drug abuse issues, or sexual harassment issues). Though the public has an interest in open government, open records, and the proper administration of the UI program, failing to protect the confidentiality of UI records would have a chilling effect on claimants and employers using the program if they are concerned about private information being released to the public. The proper administration and functioning of the UI program, therefore, requires that UI records be confidential and made available to the public only through limited disclosures.

Section 108.14 (7), Stats., requires that records maintained by the Department or the Labor and Industry Review Commission in connection with the administration of the UI program are confidential and open to public inspection or disclosure only to the extent the Department permits in the interest of the program. The requirement of confidentiality of UI records has been in the Wisconsin law since 1937. The Department promulgated Chapter DWD 149 to govern Disclosure of UI Records and s. DWD 140.09 to allow for limited access to hearing files and inspection of hearing records on appeals.

The Department of Labor (DOL) issued a final rule on the Confidentiality and Disclosure of State UC Information, effective October 27, 2006. The current Chapter DWD 149 was adopted in 1993 after the DOL circulated its proposed confidentiality rule. As a result, the Department's rule is sufficient to meet many, but not all, of the requirements of the DOL in the final rule.

The Department proposes to amend Chapter DWD 149 to comply with the final federal rule on Confidentiality and Disclosure of State UC Information. In particular, the Department proposes to adopt provisions that ensure the confidentiality of Social Security numbers is maintained by requiring that they be redacted from records disclosed to third parties. The proposed rule will define what records are "public domain information" that can be disclosed to third parties. The proposed rule will require that claimants and employers be notified that records may be utilized for government purposes. The proposed rule will also clarify

which disclosures are mandatory or permissive and will clarify that elected officials are agents of claimant or employers when acting in response to a constituent's inquiry. For disclosures to third parties who are not agents of claimants or employers, the proposed rule will provide when disclosures are allowed, when signed authorizations are required, and what agreements or safeguards against redisclosure are required. The proposed rule will amend the requirements for record sharing agreements and require payment of costs of disclosure of UI records as provided in the federal rule.

Finally, while amending the administrative rule to conform to the final federal rule, the Department proposes also to amend the references to unemployment "compensation" to unemployment "insurance" and to update certain provisions to reflect changes in technology.

### **Statutory Authority**

Sections 108.14 (7) and 227.11 (2), Stats.

### **Entities Affected by the Rule**

Claimants for unemployment insurance benefits, employers, the Department, and the public.

### **Comparison with Federal Regulations**

The Department of Labor (DOL) adopted a final rule, 20 C.F.R. Part 603, regarding Confidentiality and Disclosure of State UC Information, effective October 27, 2006. States must amend their laws, rules, procedures, or existing agreements in order to conform and comply with the rule by October 27, 2008. The DOL confidentiality requirements are derived from the "methods of administration" requirement of Section 303(a)(1) of the Social Security Act (SSA). The disclosure requirements are derived from Sections 303(a)(7), (c)(1), (d), (e), (f), (h), and (i), of the SSA and Section 3304(a)(16) of the Federal Unemployment Tax Act (FUTA). The confidentiality and disclosure requirements in the SSA are conditions for receipt of grants for UI administration. The disclosure requirements of the FUTA are conditions required of a state in order for employers in the states to receive credit against the FUTA tax under 26 U.S.C. § 3302.

The DOL rule requires that state UI records be confidential and sets minimum standards concerning what must be confidential and for the payment of costs, safeguards, and data-sharing agreements. The rule also requires that certain UI information must be disclosed to certain governmental entities, such as to child support agencies for purposes of establishing certain child support obligations. States are allowed to disclose more information than is required (permissive disclosures), provided the disclosures otherwise meet the conditions of the rule, such as record sharing agreements, redisclosure safeguards, and payment of costs. State UI programs are not allowed to use grant funds to pay for costs of disclosure unless the costs are not more than an incidental amount of staff time and no more than nominal processing costs. Grant funds may be used for disclosures for the proper administration of the UI program, of public domain information, and disclosures to claimants or employers or their agents.

### **Estimate of Time Needed to Develop the Rule**

90 hours

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# Submittal of Rules to Legislative Council Clearinghouse

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

## **Agriculture, Trade and Consumer Protection**

On September 13, 2007, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The rule affects ch. ATCP 21, relating to voluntary certification of firewood dealers.

### **Agency Procedure for Promulgation**

The Department will hold public hearings on this rule. The Division of Agricultural Resource Management is primarily responsible for this rule.

### **Contact Person**

Bob Dahl  
(608) 224-4573

## **Commerce**

On September 14, 2007, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The rule affects ch. Comm 34, relating to amusement rides.

### **Agency Procedure for Promulgation**

A public hearing is required and is scheduled for October 15, 2007. The Division of Safety and Buildings is responsible for the rule.

### **Contact Person**

Jim Quast  
(608) 266-9292  
jim.quast@wisconsin.gov

## **Revenue**

On September 13, 2007, the Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed rule revises chs. Tax 61 and 63. The rule will address the potential for additional shipping at cost to the retailer in situations where the retailer desires additional shipping options, and will remove minor requirements that currently exist in the Retailer Performance Program (RPP) which the Lottery has determined are not consistent with the program intent. And last, the proposal will also create rules that satisfy the voluntary non-disclosure requirements of 2003 Act 145,

and will also clean up minor technical problems in both chapters.

### **Agency Procedure for Promulgation**

A public hearing has been scheduled for October 17, 2007. The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

### **Contact Person**

If you have questions regarding this rule, you may contact:

James Amberson  
Lottery Division  
James.Amberson@revenue.wi.gov  
(608) 267-4840

## **Transportation**

On September 12, 2007, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The rule affects ch. Trans 129, relating to motorcycle courses.

### **Agency Procedure for Promulgation**

A public hearing is required and is scheduled for October 30, 2007. The Division of State Patrol, Transportation Safety is responsible for promulgation of the rule.

### **Contact Person**

Julie A. Johnson  
(608) 267-3703

## **Veterans Affairs**

On September 6, 2007, the Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The rule affects ch. VA 2, relating to the tuition reimbursement grant program.

### **Agency Procedure for Promulgation**

A public hearing is required and is scheduled for October 19, 2007. The Office of the Secretary is primarily responsible for preparing the rule.

### **Contact Person**

James A. Stewart  
Chief Legal Counsel  
(608) 266-3733

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## Rule-Making Notices

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### Notice of Hearings

#### Agriculture, Trade and Consumer Protection

[CR 07-085]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule affecting s. ATCP 21.20, Wis. Adm. Code, relating to voluntary certification of firewood dealers.

DATCP will hold two public hearings at the times and places shown below. DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearings, the hearing record will remain open until November 2, 2007 for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, to [Robert.dahl@datcp.state.wi.us](mailto:Robert.dahl@datcp.state.wi.us) or at <https://apps4.dhfs.state.wi.us/admrules/public/home>.

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by October 12, 2007, by writing to Deb Bollig, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4584. Alternatively, you may contact the DATCP TDD at (608) 224-5058. The hearing facilities are handicap accessible.

#### Copy of Rule

You may obtain a free copy of this hearing draft rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4573 or emailing [robert.dahl@datcp.state.wi.us](mailto:robert.dahl@datcp.state.wi.us). Copies will also be available at the hearing. To view the hearing draft rule online, go to: <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](mailto:Keeley.Moll@datcp.state.wi.us) or by telephone at (608) 224-5039.

#### Hearing Information

##### October 16, 2007

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

DNR Service Center  
4301 Rib Mountain Road  
Wausau, WI 54401

##### October 18, 2007

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

Dept. of Agriculture, Trade and Consumer Protection  
2811 Agriculture Drive, Board Room (CR-106)  
Madison, Wisconsin, 53718-6777

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

This hearing draft rule creates a voluntary certification program for firewood dealers. Under this rule, the

Department of Agriculture, Trade and Consumer Protection ("DATCP") may certify firewood dealers who agree to treat firewood according to rule standards to eliminate potential infestations of Emerald Ash Borer and other pests. A firewood dealer is not required to be certified under this rule in order to sell firewood in this state.

#### *Statutory authority*

Sections 93.06 (1p), 93.07 (1), 93.07 (12) and 94.01, Stats.

#### *Statutes interpreted*

Sections 93.06 (1p), 93.07 (12) and 94.01, Stats.

#### *Explanation of agency authority*

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has broad general authority, under ss. 93.06 (1p), 93.07 (12) and 94.01, Stats., to adopt regulations to prevent and control plant pest infestations. The voluntary certification program created by this rule is part of an overall state strategy to prevent and control plant pest infestations, including Emerald Ash Borer infestations.

#### *Background*

Emerald Ash Borer and other major pests are carried by firewood. The Wisconsin Department of Natural Resources (DNR) has adopted rules, under NR 45, to restrict the entry of firewood into Wisconsin state parks. The DNR rules prohibit, in state parks, firewood originating from outside this state or more than 50 miles from the state park unless the firewood originates from a firewood dealer who is certified by DATCP.

#### *Rule content*

This rule creates a DATCP program for certification of firewood dealers. Firewood dealers certified under this rule may supply firewood to Wisconsin state parks. The certification program would be open to all firewood dealers in the state, regardless of whether they supply firewood to Wisconsin state parks. Certified firewood dealers must comply with this rule. A firewood dealer is not required to be certified under this rule in order to sell firewood in this state. A certified firewood dealer may sell or distribute firewood acquired from an out of state source but must apply the treatment required to be certified at the dealer's premises in Wisconsin. Certification does not authorize firewood imports from quarantined areas that are currently prohibited under ch. ATCP 21, Wis. Adm. Code.

Under this rule, DATCP may annually certify a firewood dealer. An annual certification expires on December 31 of each year. A firewood dealer is not required to be certified in order to sell or distribute firewood in this state. There is a \$50 charge for certification. The authority for the department to charge the fee is in s. 93.06 (1m) and (1q), Stats. Certification permits a firewood dealer to supply firewood to Wisconsin state parks, pursuant to NR 45.04(1)(g).

DATCP may certify a firewood dealer if all of the following apply:

- The firewood dealer submits a complete application that complies with this rule.
- DATCP inspects all of the business premises identified in the certification application and determines, based on that inspection, that the firewood dealer is equipped to fulfill

all of the representations included in the certification application.

A certification application must include all of the following:

- The correct legal name of the firewood dealer, and any trade names under which the firewood dealer sells or distributes firewood in this state.
- The address of the firewood dealer's business headquarters.
- The address of every business location from which the firewood dealer sells or distributes firewood in this state.
- The approximate annual volume of firewood that the firewood dealer sells or distributes in this state, including the approximate annual volume sold or distributed from each business location.
- The sources from which the firewood dealer obtains firewood for sale or distribution in this state. The application shall include the name and address of each person, if any, from whom the firewood dealer procures cut firewood.

A certification application must also include the following statement (the firewood dealer must notify DATCP if, at any time before or after the firewood dealer is certified, the statement is no longer accurate):

**Firewood the applicant sells or distributes in this state intended to meet the requirements of NR 45.04 (1) (g) is treated at the premises of the firewood dealer in at least one of the following ways prior to sale or distribution:**

**1. Each piece of firewood is heated to a temperature at least 160° F. (71.1° C.) at the center of the piece, and is maintained at that temperature for at least 75 minutes.**

**2. All bark, and additional wood to a depth of at least ½ inch beneath the bark, is removed from each piece of firewood.**

**3. The firewood is stored on the firewood dealer's premises for at least 2 years before it is sold or distributed in this state.**

**4. The firewood is fumigated with a registered fumigant pesticide, according to the pesticide label, to kill all insect pests that may inhabit the firewood.**

**5. The firewood is treated in a manner approved, in writing, by the Wisconsin Department of Agriculture, Trade and Consumer Protection, to kill all insect pests that may inhabit the firewood."**

DATCP must grant or deny a certification application within 60 business days after DATCP receives a complete application. DATCP may withdraw a certification if the applicant materially misrepresents any information in the application, or fails to honor any of the commitments made in the application. A certification does not constitute a warranty, by the department, that firewood is free of pests.

#### *Comparison to federal regulations*

Under the federal Plant Protection Act, the Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA-APHIS) has responsibility for excluding, eradicating and controlling serious plant pests, including the Emerald Ash Borer. USDA-APHIS has instituted statewide quarantines on the movement of ash wood for Illinois, Indiana, Pennsylvania and Ohio, in addition to the Lower Peninsula of Michigan. These

quarantines include restrictions on the interstate movement of any hardwood (non-coniferous) firewood, and are in addition to the regulations adopted by each state related to the movement of firewood. Firewood cannot be moved from a quarantined area unless it is accompanied by an APHIS certificate that shows the firewood to be free of infested wood.

#### *Comparison to adjacent states*

Surrounding states where EAB has been identified (Illinois, Indiana, Ohio, Pennsylvania and Michigan) have state and federal quarantines that prohibit the movement of regulated articles, including all hardwood firewood, out of quarantined areas. Firewood can only move out of quarantined areas after it is certified by USDA. Other surrounding states, such as Minnesota and Iowa, are conducting information and education campaigns about the danger of moving firewood and are considering regulatory options for dealing with firewood movement.

#### **Fiscal Impact**

There are thousands of firewood dealers in Wisconsin, but few of them will have a strong incentive to be certified under this rule. DATCP assumes that, at least initially, certification will be attractive mainly for large firewood dealers who can afford to implement the firewood treatment regimen required for certification.

Certification may be especially attractive for large firewood dealers who wish to supply firewood to Wisconsin state parks. DNR state park rules prohibit firewood originating from outside the state or more than 50 miles from the state park, unless the firewood dealer is certified under this rule.

DATCP projects approximately one day of staff time to process each certification application and to inspect the firewood dealer's business premises. DATCP will incur inspector travel costs, but will attempt to minimize those costs by integrating inspections with other inspections. DATCP does not plan to do routine follow-up inspections, but may conduct occasional random inspections of certified firewood dealers.

DATCP assumes that approximately 30 firewood dealers will apply for certification for calendar year 2007. The \$50 annual certification fee will offset a portion of DATCP's expenses related to the operation of the firewood certification program. DATCP will absorb the remaining expenses.

#### **Business Impact**

This rule will not have a significant impact on firewood dealers. This rule does not require firewood dealers to be certified, nor does it restrict the sale or distribution of firewood by uncertified dealers. This rule creates a voluntary certification program, which may benefit some firewood dealers. Those dealers who choose to be certified will pay a \$50 fee for certification.

DNR state park rules prohibit firewood originating outside this state or more than 50 miles away, unless the firewood dealer is certified by DATCP. This rule will allow certified firewood dealers to supply firewood to state parks throughout the state, regardless of the firewood dealer's distance from the park. This rule will primarily benefit large firewood dealers who can afford to implement the firewood treatment regimen required for certification. This rule does not authorize or prohibit imports of firewood from outside this state. Current DATCP rules under ATP 21.17 prohibit imports of firewood from areas which the U.S. department of agriculture has formally designated as being infested with certain wood pests, such as Emerald Ash Borer.

## Environmental Impact

This rule will not have a significant impact on the environment. This rule does not restrict the sale or movement of firewood in this state. This rule will allow some firewood in state parks that would otherwise be prohibited by DNR rules, but only if the wood comes from a certified dealer who agrees to treat the wood to destroy plant pests such as Emerald Ash Borer. DATCP will inspect at least annually to verify that the firewood dealer has the necessary facilities and equipment to honor the agreement.

## Notice of Hearing Commerce (Amusement Rides, Ch. Comm 34) [CR 07-086]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1) and 101.17, Stats., the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 34 relating to amusement rides.

### Hearing Information

The public hearing will be held as follows:

<b><u>Date and Time:</u></b> October 15, 2007 Monday 1:00 p.m.	<b><u>Location:</u></b> Conference Room 3B Thompson Commerce Center 201 W. Washington Avenue Madison
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Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **October 25, 2007**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Jim Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

### Analysis Prepared by Department of Commerce

#### *Statutes interpreted*

Section 101.17, Stats.

#### *Statutory authority*

Sections 101.02 (1) and 101.17, Stats.

#### *Related statute or rule*

Statutes: Sections 101.19 and 101.12 (1), Stats.

Administrative Rules: Ch. Comm 34, Amusement Rides

#### *Explanation of agency authority*

Under the authority of s. 101.17, Stats., the Department of Commerce has oversight of various mechanical devices and equipment, which includes amusement rides, in order to protect public safety. The Department fulfills this

responsibility by promulgating the Amusement Ride Code, under chapter Comm 34.

#### *Summary of proposed rules*

The proposed rules will require amusement ride owner to acquire and maintain liability insurance in order to operate rides in Wisconsin.

The proposed rules also create safety field attachment or connection redundancy provisions for amusement rides where passengers donning harnesses are elevated.

#### *Comparison with federal regulations*

The US Consumer Product Safety Commission under the Consumer Product Safety Act has jurisdiction over portable amusement rides. The commission has not developed any specific standard for portable amusement rides. At times the commission has issued various safety bulletins regarding operation, repair, maintenance or set-up for specific rides.

There are no existing or proposed federal regulations that address the specific issue of this rule.

#### *Comparison with adjacent states*

A review of the amusement ride insurance regulations for the states of Illinois, Iowa, Michigan and Minnesota indicated the following liability minimums:

- Illinois, \$100,000 for injury to one person, \$1,000,000 in aggregate, \$500,000 in aggregate for permanent sites with not more than 5 rides and operating at a height not more than 8 feet.
- Iowa, \$100,000 for injury to one person, \$300,000 in aggregate.
- Michigan, \$300,000 in aggregate, \$50,000 in aggregate if owner has only one ride designed primarily for children.
- Minnesota, \$1,000,000 in aggregate.

An Internet-based search of the amusement ride regulatory programs for the states of Illinois, Iowa, Michigan and Minnesota found that none of the states have specific rules or standards regarding the field attachment or connection of passengers as addressed by the proposed rules.

#### *Factual data and analytical methodologies*

The proposed rules were developed utilizing information gathered during the department's investigation of the recent accident. The department also evaluated the current provisions of the Amusement Ride Code, chapter Comm 34, with respect to industry safety practices that were identified during the department's periodic inspection of rides. The department also reviewed the amusement ride insurance regulations of various states.

#### *Analysis and supporting documents used to determine effect on small business*

Currently, approximately 320 amusement ride owners and operators have registered rides with department for 2007. All owners and operators would be required to obtain liability insurance under the proposed rules. The cost of the amusement ride insurance is dependent upon several variables including the size of the operation and the type of rides. An insurance source indicated that the cost for a million dollar policy could range between \$30,000 and \$100,000 annually. However, it is unknown how many of these owners and operators already are covered by insurance either voluntarily or to satisfy contractual obligations or other state regulations.

Based on a review of the list of 1400 amusement rides registered to operate in Wisconsin for 2007, the department estimates that fewer than 10 rides may fall within the scope of these proposed rules regarding attachment. These rules



would not include such amusement rides as bungee jumps, bungee trampolines, and rock walls with mechanical take-up systems.

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

### Copy of Rule

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at [www.commerce.wi.gov/SB/](http://www.commerce.wi.gov/SB/). Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at [roberta.ward@wisconsin.gov](mailto:roberta.ward@wisconsin.gov), or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

### Environmental Analysis

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

### Initial Regulatory Flexibility Analysis

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

The rules will affect amusement ride owners and operators.

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

Under the proposed rules amusement ride owners and operators will need to keep in place liability insurance will operating in the state.

#### 3. Types of professional skills necessary for compliance with the rules

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

#### 4. Will the rules have a significant economic impact on small businesses?

Yes.

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

### Fiscal Estimate

The proposed rules make permanent emergency rules that clarify the minimum type of attachment or connection of harnessed passengers that are necessary for certain types of amusement rides. The enforcement of the proposed rule will be incorporated into the periodic inspections of department staff. Carabiners which are utilized to make this type of attachment or connection cost between \$15 to \$25.

The proposed rules would also require amusement ride owners and operators to obtain and keep in place liability insurance while operating in the state. The cost of the amusement ride insurance is dependent upon several variables including the size of the operation and the type of rides. An insurance source indicated that the cost for a million dollar policy could range between \$30,000 and \$100,000

annually. However, it is unknown how many of these owners and operators already are covered by insurance either voluntarily or to satisfy contractual obligations or other state regulations.

## Notice of Hearings Health and Family Services (Health, Chs. HFS 110—) [CR 07-077]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2), 252.04 (1), (2), and (10), Stats., and interpreting ss. 252.04 (1) to (7) and (10), Stats., the Wisconsin Department of Health and Family Services proposes to amend ch. HFS 144 relating to the immunization of students and affecting small businesses.

### Hearing Information

Date and Time	Location
<b>October 15, 2007</b> 12:00 Noon to 2:00 PM	Waukesha State Office Bldg. 141 N. W. Barstow Street Room 151 Waukesha, WI
<b>October 16, 2007</b> 2:00 PM to 4:00 PM	Lakeview Professional Plaza 1200 Lake View Drive First Floor Dining Room Wausau, WI
<b>October 18, 2007</b> 3:00 PM to 5:00 PM	Dept. of Health and Family Services 1 W. Wilson Street Room B155 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 Written Comments

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

The deadline for submitting comments to the Department is 4:30 p.m. on **October 25, 2007**.

### Analysis Prepared by the Department of Health and Family Services

Under section 252.04 (1), Stats., the Department is responsible for carrying out a statewide immunization program to eliminate mumps, measles, rubella (German measles), diphtheria, pertussis (whooping cough), poliomyelitis, and other diseases that the Department specifies by rule, and to protect against tetanus. To achieve this goal, any student admitted to a day care center, or a nursery, elementary, middle, junior or senior high school is required to present written evidence of having completed the immunizations for each vaccine required for the student's grade. The immunization requirement is waived if the student's parent, guardian or legal custodian submits a written

statement to the school or day care center objecting to the immunization for reasons of health, religion or personal conviction. The most recent additions to the list of diseases against which students are to be immunized are hepatitis B (1997) and varicella (chickenpox) (2001). During the past six years, a new vaccine [pneumococcal conjugate vaccine (PCV)] and a new formulation of an existing vaccine [tetanus toxoid, reduced diphtheria toxoid and acellular pertussis (Tdap)] have been licensed, a change in the number of doses of a licensed vaccine (varicella vaccine) has been recommended, and the phase-in periods for hepatitis B and varicella vaccine requirements have ended. Therefore, the Department proposes to amend ch. HFS 144, rules governing immunization of students, to accomplish the following:

1. Add pneumococcal infection to the list of diseases in ch. HFS 144 against which students in day care centers are to be immunized because PCV has been shown to be highly effective in reducing diseases caused by pneumococcus, e.g., pneumonia, bacteremia, sinusitis and acute otitis media (middle ear infection), among children less than 5 years of age. The Centers for Disease Control and Prevention Advisory Committee on Immunization Practices (ACIP) recommended this vaccine for all children 2–23 months of age, and for children 24–59 months of age who attend day care centers, in 2000.

2. Add Tdap to ch. HFS 144 Table 144.03–A because this vaccine can be given to adolescents. Immunizing older students will prevent pertussis outbreaks in schools and will indirectly protect infants too young to be fully immunized. From 1986 through 2004, Wisconsin had the fifth highest incidence of pertussis in the nation. The ACIP recommended this vaccine for all children at 11–12 years of age in 2005.

3. Add a second dose of varicella vaccine to ch. HFS 144 Table 144.03–A because two doses of the vaccine have been shown to be more effective than one dose in preventing breakthrough cases. In 2005, the ACIP provisionally recommended two doses of varicella vaccine for all children 1 through 12 years of age and the passage of middle school and high school varicella vaccine requirements.

4. Remove hepatitis B and varicella vaccine coverage phase-in language because these phase-in time periods have passed and the language is no longer necessary.

In addition, the Department proposes the following to update ch. HFS 144:

5. Add language stating that the Department may temporarily suspend a vaccine requirement if the Department determines that there is a shortage of the vaccine because a student could not possibly obtain a required vaccine in such circumstances.

6. Revise the definition of “written evidence of immunization” to include electronic records because immunization registries used by many providers store immunization data that are accessible to schools electronically.

7. Change the language regarding release of immunization information between vaccine providers and schools or day care centers, and among providers, from discretionary to mandatory to create a clear requirement for disclosure.

The intended goals of the proposed rulemaking are to:

- Prevent pneumococcal infections, pertussis infections and break-through varicella infections among students;
- Update the rules by deleting obsolete sections and adding clarifying language; and

- Create a clear requirement for disclosure of immunization information.

An alternative to regulatory action is promotion of these vaccine recommendations to parents and immunization providers. Allowing time to elapse between licensure of a vaccine and enacting a school requirement has traditionally allowed market forces to increase the number of immunized children. However, coverage achieved through voluntary compliance with vaccine recommendations is always lower than that achieved through regulation. Before states enacted school vaccine requirements, outbreaks of vaccine-preventable diseases continued long after vaccine licensure because vaccine coverage was suboptimal. For example, although an effective measles vaccine was licensed in 1967, measles outbreaks involving thousands of Wisconsin children continued to occur until a school requirement was set in place in 1980.

### Initial Regulatory Flexibility Analysis

Approximately 60% of children in Wisconsin have private health insurance. There are 122 direct health and medical insurance carriers in Wisconsin with a total of 23,000 paid employees. The only health care insurers in Wisconsin that meet the definition of a small business in s. 227.114 (1), Stats., are limited scope health plans that, for example, only offer dental or vision coverage. Health care insurers that offer comprehensive coverage for pediatric health care, including immunizations, do not meet the definition of a small business.

Day care centers are organized as small businesses [about 95% of the 2,485 group (9 or more children) day care centers in the state are small businesses, as are all of the 3,122 family (4–8 children) day care centers]. Day care centers will experience some increase in workload in tracking compliance with the requirement for PCV, reporting compliance to the Department, and in referring noncompliant students to the district attorney or corporation counsel for enforcement action. It is not known how much workload will increase or its impact, if any, on costs. However, since 85% of children in Wisconsin have already received PCV, the vast majority of day care center students will be compliant with the requirement when it takes effect and will not require warning letters from day care centers or enforcement action by district attorneys. Additionally, the tracking and reporting burden on day care centers will be mitigated by requiring fewer than the maximum number of doses of PCV. Day care centers for many years have been checking for compliance with required immunizations for school entry. They are part of the system for protecting children against diseases that are preventable through administration of approved vaccines.

Day care centers are the only small businesses that the proposed rules will affect. Pursuant to the foregoing analysis, the Department believes that these rules will not have a significant economic impact on day care centers.

### Small Business Regulatory Coordinator

Rosie Greer  
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### Fiscal Estimate

This rulemaking requires pneumococcal conjugate vaccine (PCV), a new formulation of diphtheria, tetanus and pertussis (whooping cough) vaccine (Tdap), and a second dose of varicella (chickenpox) vaccine for students. The vaccines the Department provides upon request and without charge to local health departments and private health care providers is purchased by the Department with a line of credit provided by the federal government’s Centers for Disease Control and Prevention (CDC) or with GPR funds under s. 20.43 (1) (cm),

Stats. Section 20.43 (1) (cm), Stats., authorizes the Department to expend an amount that is equal to the difference between the statutory limit of a \$9,000,000 sum sufficient appropriation and the amount of funding the Department receives for the federal Vaccines for Children Program (VFC) and Section 317 of the Public Health Service Act. VFC funds are sum sufficient. Federal 317 funds are not guaranteed to meet actual need but have been sufficient to cover the vaccine costs associated with the Department's implementation of previous vaccine requirements. The total estimated cost for vaccine to implement the proposed requirements in the 2008–09 school year is \$22 million; the possible annual cost to the state, in the unlikely event that no 317 funds are available, is \$3.6 million.

The following assumptions were used to estimate costs:

- **PCV:** The vaccine costs \$73.70 in the private sector and \$57.59 in the public sector; 85% of children have already received PCV vaccine; 50% of children are enrolled in a day care center; 5% of students' parents will elect to waive the requirement. Thus, of a total annual cohort of 359,000 0–4 year olds, 25,500 students will require vaccine. Private providers will pay 59% of the vaccine cost (\$1.6 million); the federal VFC Program will pay 21% of the vaccine cost (\$434,000); and federal 317 funds or GPR funds will pay 19% of the vaccine costs (\$392,000).
- **Tdap Vaccine:** The vaccine costs \$36.84 in the private sector and \$30.75 in the public sector; 20% of the cohort of 6th, 9th and 12th grade students has already been vaccinated; 5% of the students' parents will elect to waive the requirement. Thus, of a total annual cohort of 228,000 students, 182,000 will require vaccine. Private providers will pay 59% of the vaccine cost (\$3.8 million), the federal VFC Program will pay 21% of the vaccine cost (\$1.1 million, and federal 317 funds or GPR funds will pay 19% of the vaccine costs (\$1 million).
- **Second Dose Varicella Vaccine:** The vaccine costs \$71.11 in the private sector and \$56.90 in the public sector; 3% of the cohort of kindergarteners, 6th and 12th grade students has already had chickenpox; 5% of the students' parents will elect to waive the requirement. Thus, of a total annual cohort of 223,000 students, 205,000 will require vaccine. Private providers will pay 59% of the vaccine costs (\$8.6 million); the federal VFC Program will pay 21% of the vaccine costs (\$2.5 million); and federal 317 funds or GPR funds will pay 19% of the vaccine costs (\$2.2 million).

### Copy 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

Marjorie Hurie  
 Department of Health and Family Services  
 Division of Public Health  
 Bureau of Communicable Diseases and Preparedness  
 1 W. Wilson St., Rm 318  
 PO Box 2659  
 Madison, WI 53701–2659  
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 608–264–9892  
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## Notice of Hearing Revenue [CR 07–087]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 565.10 (14) (b) 3m., Stats., and interpreting ss. 565.02 (4) (g) and 565.10 (14) (b) 3m., Stats., the Department of Revenue will hold a public hearing at the time and place indicated below to consider the proposed rule revising chapters Tax 61 and 63, Wis. Adm. Code.

The proposed rule will create language that permits the Lottery to offer improved billing terms to its retailer partners, and will address the potential for additional shipping at cost to the retailer in situations where the retailer desires additional shipping options. It will also remove minor requirements that currently exist in the Retailer Performance Program (RPP) which the Lottery has determined are not consistent with the program intent. And last, the proposal will also create rules that satisfy the voluntary non–disclosure requirements of 2003 Act 145, and will also correct minor technical problems in both chapters. These changes do not significantly affect small business, and in some cases will improve the means by which retailers interact with the Lottery.

### Hearing Information

The hearing will be at 11:00 am on **October 17, 2007**, and will be held at the Wisconsin Lottery Office located within the Department of Revenue Building at 2135 Rimrock Road, Madison, WI.

Handicap access is available at the main front entrance of the building.

### Submission of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than **October 24, 2007**, which is no less than 7 days after the hearing date. Written comments will be given the same consideration as testimony presented at the hearing.

### Contact Person

James Amberson  
 Department of Revenue  
 2135 Rimrock Road  
 P.O. Box 8941  
 Madison, WI 53708–8941  
 (608) 267–4840  
[James.Amberson@revenue.wi.gov](mailto:James.Amberson@revenue.wi.gov)

A copy of the proposed rule can be obtained from Mr. Amberson.

### Analysis Prepared by Department of Revenue

#### *Statutes interpreted*

Sections 565.02 (4) (g) and 565.10 (14) (b) 3m., Stats.

#### *Statutory authority*

Sections 227.11 (2) (a) and 565.10 (14) (b) 3m., Stats.

#### *Explanation of agency authority*

The proposed order is intended to improve Chapters Tax 61 and Tax 63, Wisconsin Administrative Code.

In Chapter Tax 61, the Wisconsin Lottery is proposing an amendment to the rule authority for current retailer billing terms, consistent with changes to s. 565.10 (15) and which

were made as part of 2005 Wis. Act 25, s. 2427b., that amended the time period within which the lottery must bill retailers from not less than weekly to not less frequently than once every 60 days. The lottery is also proposing language to broaden its ability to offer to retailers the option to pay the cost of additional shipping of ticket inventory should the retailer request additional shipments. Also proposed is language to amend minor requirements which currently exist in the Retailer Performance Program (RPP) and that the lottery has determined are not consistent with the program intent. The proposal will also create rules that satisfy the voluntary disclosure requirements of 2003 Act 145, and will also correct minor technical problems in both chapters.

In Chapter Tax 63, rule amendments are proposed to clarify the manner in which non-profit retailers should return product for credit with the lottery.

#### **Related statute or rule**

The Wisconsin Lottery maintains Chapters Tax 61, 62 and 63. Further, ss. 20.75 and 25.566, and ch. 565, Wis. Stats., are all relevant to the Wisconsin Lottery. This proposed rule order directly affects Chapters Tax 61 and 63, and draws on ch. 565, Wis. Stats.

#### **Plain language analysis**

The proposed order is intended to implement changes that will improve the methods and processes that the Wisconsin Lottery uses to serve its retailer business partners. Nearly all of the proposed changes generate no increased cost of compliance for lottery retailer small businesses, and in some cases may slightly reduce some operating costs.

The proposal enables the lottery to offer improved billing terms to retailers which are more in keeping with both lottery industry and other retail industry standards. Billing terms are the processes by which a retailer is billed for ticket inventory. Anticipated improvements in the billing terms should result in terms that are easier to understand and that require less overall labor, thereby resulting in some labor savings for retailers. The lottery is proposing the creation of a "Billing Terms Policy and Procedure" document, drafted in plain language, to aid retailers in understanding lottery billing practices. Consistent with these changes, the agency is also pursuing electronic methods of providing billing information directly to retailers, which should increase these efficiencies.

The proposed language also permits the agency to extend to retailers the option to pay additional shipping costs should the retailer request additional shipments on dates other than the retailer's assigned shipment date(s). Any expenses will be limited to the actual cost of the delivery, and the proposed language would only apply if the lottery implements assigned delivery dates for retailers. Currently, the agency does not assign shipment dates to retailers, but may need to do so in the future dependent upon how new billing terms or delivery methods are implemented.

The proposal amends minor requirements which currently exist in the Retailer Performance Program (RPP) and that have been determined to be inconsistent with the program intent.

The proposal also clarifies the concepts of suspension and termination of retailer contracts. Further, the proposal will create rules that satisfy the voluntary disclosure requirements of 2003 Act 145, in which the lottery must identify when retailers may use discretion in the event of the disclosure of a non-compliance issue.

Last, the proposal clarifies language on the manner in which non-profit retailers should return product for credit with the lottery.

#### **Comparison with federal regulations**

There is no relevant outstanding federal legislation that would require comparative review for the changes proposed under either Chapter Tax 61 or 63.

#### **Comparison with adjacent states**

Regarding the changes to Chapter Tax 61, the statutes and administrative rules of Illinois, Iowa, Michigan and Minnesota (all of which have state lotteries) were researched, and each state codifies more or less lottery retailer policy of import to small businesses. As a consequence, the Wisconsin Lottery's administrative rules may be more or less detailed when compared to a given state. The following state's laws were reviewed:

- State of Michigan: s. 432.1 – 432.38, Stats., and R432.1 – 432.38, Admin. Code.
- State of Minnesota: s. 349A, Stats., and 7856, Admin. Code.
- State of Illinois: s. 20 ILCS 1605, Stats. (taken from Chapter 120, various para.), and Section 1770, Admin. Code.
- State of Iowa: s. 99G, Statutes.

This analysis addresses the five major changes that are contained within the body of this rule order, which are retailer billing terms, discretion of enforcement per 2003 Act 145, ticket distribution controls, the industry development of reselling tickets, and retailer contract termination.

First, with regards to retailer billing terms, found in Sections 1 and 8 to 10 of this rule order, the adjacent states address the topic as follows:

- Michigan does not appear to make substantial statements in statutes or administrative rules, regarding retailer billing.
- Minnesota makes the following statement: "*Lottery retailers shall deposit in a bank account all money received by the retailer from the sale of lottery tickets, less the amount retained as compensation for the sale of tickets and credit for direct payment of prizes. The lottery shall have access through electronic funds transfer (EFT) to all money required to be deposited by lottery retailers.*" Significantly, no time period is identified in this rule.
- Illinois maintains significant statutory and administrative rule language regarding billing procedures, due payments that are missed, and serious delinquency. The language can be found under 20 ILCS 1605/21 (from Ch.120, par. 1171), and under Section 1770.90, Admin. Rules. While extensive, the fact that the entire procedure appears to be promulgated as administrative rules makes it potentially difficult to keep up-to-date with changes in banking, sales practices or other relevant technological developments.
- Iowa does not appear to make substantial statements in statutes or administrative rules, regarding retailer billing.

With regard to discretion of enforcement, created in Section 25 of this rule order and consistent with the requirements of 2003 Act 145, the adjacent states do not maintain a similar clause in lottery statutes or administrative code.

With regard to distribution of ticket inventory, affected by Section 17 of this rule order, the adjacent states address the topic as follows:

- Michigan, Minnesota and Iowa do not appear to make substantial statements regarding distribution of inventory in statutes or administrative rules.

- Illinois makes few substantial statements in statute or administrative rules. Generally, it appears that Illinois defines agents to potentially include distributors, such that it may have business partnerships with retailers who inventory and sell to other retailers, a practice not uncommon among larger state's lotteries. Rules addressing significant delinquency of payment (by agents or distributors) are maintained under 20 ILCS 1605/21, Stats. The lottery does not intend to pursue distributor relationships, as they do not fit well with our smaller population and market.

With regard to restrictions on the act of reselling, affected by Section 12 of this rule order, the adjacent states address the topic as follows:

- Michigan permits the Lottery to suspend, revoke or not renew a contract, if "...there is reasonable cause to believe that the retailer is engaged in fraud, misrepresentation, or illegal gaming." The statement does not directly identify reselling as fraudulent or illegal, but re-selling may be determined to be illegal dependent upon the facts of the particular situation.
- Minnesota makes general statements in statutes and substantial statements in administrative rules, regarding restrictions on the act of reselling. Similar to Michigan, Minnesota also has relevant general language. Under s.349A, Subd. 11, Stats., the director shall cancel the contract if a retailer "(a)(2) has committed fraud, misrepresentation, or deceit.", or if a retailer "(b)(4) violates a law or a rule or order of the director." Both these statements, while general, may also apply to reselling dependent upon the circumstances. Further, administrative rule 7856.6010, subpar. 2, clarifies the authority of the director, who may cancel, suspend or not renew a contract for a retailer who..." sold lottery tickets to a person who the retailer knows or has reason to know will resell the tickets to other persons." Notably, this language may restrict lottery players from buying tickets for friends, family or co-workers who have provided the buyer with the dollars necessary to make the face-value purchase. This could effectively ban the behavior used by a group of Wisconsin citizens who were employees of a Sargento, Inc. cheese processing facility near St Cloud, WI. The co-workers had organized a spokesperson to buy tickets for them on a frequent and regular basis, and as a group eventually won and shared the Powerball jackpot of August 5, 2006. Wisconsin's proposed rule order is drafted so that it would not ban this practice, provided all players fairly pay the stated ticket price for their ticket(s).
- Illinois makes a substantial statement in administrative rules, regarding restrictions on the act of reselling. Specifically, Section 1770.60 i) states in relevant part "...No 'service charge', 'handling fee' or other cost shall be added by any person to the established price of a ticket or share. No person shall charge a fee to redeem valid winning tickets or shares." Further, subsection l) also states, "Licensed agents shall...not conduct sales to off-premises customers by telephone, mail, parcel, delivery service, or through an agent-sponsored vehicle such as a club, players' association, or similar entity".
- Iowa does not appear to make substantial statements in statutes or administrative rules, regarding the act of reselling.

With regard to retailer contract termination, affected by Section 18 of this rule order, the adjacent states address the topic in significant depth, as follows:

- Michigan maintains substantial statements in s. 432.23 (7) to (10), including language providing authority for

probation, fines, removal of lottery terminal, assurance bonding, licensure requirements and revocation. Further, the above authorities are clarified under R 432.4 of administrative rules, with language that includes immediate suspension, revocation or denial of renewal, and provides a list of reasoned causes for the lottery to act.

- Minnesota maintains substantial statements in s. 349A, Subd. 11., Stats., regarding cancellation, suspension and refusal of renewal of retailer contracts. The language indicates that the director shall cancel the contract of a retailer who engages in any of a list of reasoned causes. Further, these authorities are clarified under 7856.6010 CANCELLATION, SUSPENSION, AND NON-RENEWAL OF CONTRACT. Both the mandatory and discretionary authorities of the lottery director are noted, and the reasoned causes for both types of action are listed. Also provided is a clause that states that cancellation may occur if there is a material change in the qualifications for a retailer's contract or other considered factors.
- Illinois maintains little statutory language, but significant administrative rule language, regarding contract termination. Specifically, under Section 1770.40 License Revocation Without Prior Notice, language exists that covers how to define a person who is "ineligible for a license", and that the director may suspend or revoke the license of an agent for cause, and reasoned causes are listed. Language is provided for an appeal hearing, and relevant factors to be reasonably considered are listed.
- Iowa maintains little administrative rule language, but some substantive statutory language, regarding contract termination. Specifically, language is found under s. 99G.27 Lottery retailer licenses – cancellation, suspension, revocation, or termination. Authority for cancellation, suspension, revocation and termination are provided, and the reasoned causes are listed.

#### *Summary of adjacent state review*

In summary the adjacent states have a range of approaches to address retailer billing terms, from general to specific (and potentially unwieldy) language. Addressing discretion of enforcement, the states do not maintain similar language. In consideration of distribution of ticket inventory, the states maintain little language, and where present it controls distributor/agent authority, a practice less useful in Wisconsin's somewhat smaller market. Reviewing termination of contracts, the adjacent states have significant language, often providing one or more sections in both statute and administrative rules on the subject. Further, there appear to be separate considerations for suspension versus termination of contract, the separation of which are consistent with the language updated within this rule order.

In summary of the changes to Chapter Tax 63, the adjacent states do not maintain language that addresses the manner in which non-profit organizations are to conduct product returns.

#### *Factual data and analytical methodologies*

Analytical methods were applied where necessary and possible. However, not all areas required analysis, and in cases where quantitative research was not feasible, anecdotal or related subject matter data was reviewed. For example, the issue of discretion of enforcement is driven by actions of the Legislature found in 2003 Act 145. The language created by the Act is clear, so no analysis was necessary.

Similarly, the language that clarifies suspension and termination of retailer contracts is considered a basic part of the due process of retailer licensing. The lottery's intention to separate the two issues improves clarity for the retailers, with no substantial change in the associated methods or practices.

As the language is being separated for clarity and there is no substantial change, no analysis is needed.

The proposed language to address ticket distribution required review of administrative expenses over time as well as consideration of unit delivery costs. Both issues are discussed below under "Analysis of the effect on small business".

Regarding the issue of reselling of tickets, there is little quantitative data. Instead, a review was conducted of anecdotal information, supported by data from a Likert scale survey question. The question was written to generate psychographic responses to the query of the propensity of a lottery player to buy tickets for someone else, and the results are discussed.

Last, the remaining issue of billing terms has received, and continues to receive, significant analysis. A review of current billing terms versus new terms ideas was conducted, and a number of lottery retailers and industry groups were surveyed. The lottery has also conducted a review of the affects of billing terms changes on its expenses and revenue stream. Further, a fiscal impact on "average retailers" was conducted, to determine how changes of various billing terms options would affect the retailer's experience. Last, the lottery also modeled the affects of other factors (such as pack size) on the cash handling needs of retailers. The results are summarized.

### **Small Business Analysis**

Generally, this portion of the analysis is given over to the impact of the proposed rule order upon small businesses. Specifically, any effect upon a lottery retailer is effectively an impact upon a small business, so the phrases 'small business' and 'lottery retailer' are effectively synonymous for purposes of this analysis. Each of the major substantive changes in this rule order is addressed separately.

#### ***Distribution Controls, proposed***

Since fiscal year 2000, the lottery's instant ticket sales have increased significantly. Accordingly, a review of ticket distribution controls has been conducted, which include analysis of expenses over time, and review of the cost of delivery per unit. The result of the analysis is that ticket distribution expenses have grown, from \$317,700 in FY2000 to \$626,700 in FY2006, an estimated 49% increase. This is directly related to three factors: 1) increased gross sales of instant ticket inventory, 2) the increased number of price points of tickets desired by the marketplace, resulting in the shipping of more packs of tickets, and 3) an increase in the number of orders per week the lottery is delivering to some retailers. The cost of a delivery is broken out as the set-up cost (currently an estimated \$3.09 per order), and an additional \$.04 to \$.10 per extra pack of tickets, depending on the weight of the pack. Due to the set-up costs of an order, it is almost always less expensive to deliver 10 packs once a week, rather than delivering five packs in one order and then five packs in another order, on different days. In an effort to slow the growth of shipping costs, the lottery is considering improvements to how it delivers and monitors ticket inventory at retail.

**Option 1:** Consideration is being given to the market trend toward diverse price points, and to opportunities for just-in-time inventory control. One possibility is a restructuring of our ticket ordering, fulfillment and delivery systems, while another is the possibility of passing on costs of shipments beyond those shipments that are normally necessary. The first option has been pursued as a budgetary initiative proposal in 2007 SB 40, the goal of which is the implementation of new software and business processes.

**Option 2:** The second option requires a clarification of authority, which is being provided in Section 7 of this rule order, as the authority to charge retailers for the delivery expense of extra orders they request. The rule has been drafted using conditional phrasing that states that a retailer can only be charged up to the delivery cost, and only in cases where the retailer has requested the extra order. The lottery is pursuing both the options of improved inventory control systems and of expanded authority to charge retailers for extra orders, as they conceptually reinforce each other and permit the addressing of the broadest range of causes of increased costs. However, the lottery has no plans to implement this particular language on the date of promulgation of this rule order, or for the foreseeable future beyond that date. Rather, the language is being drafted to ensure that it is in place and ready if fiscal circumstances should warrant its implementation. If the language is implemented, the retailer will not pay for the first order shipped per week. With proper planning retailers can work with Lottery staff to avoid any additional shipping expenses.

**Impact on small business.** It is difficult to estimate exactly how much a given retailer would experience in charges for additional order(s) in a given week. However, the expenses would be consistent with those currently experienced by the lottery. For example, an additional order of 6 packs might cost \$3.44 total (\$3.09 for the first pack, and \$.07 for each pack after the first.) Variations in the count and weight of packs in each order, as well as the current pricing structure itself, will cause some variation in the expense per order shipped. The variations will be generally limited to less than an estimated 10% of current cost, for the foreseeable future.

It is important to note that the lottery currently *does not* have plans to implement this rule language regarding retailers paying for additional orders. To do so would require the lottery to have delivery day assignments in place as of the promulgation date; this will not be the case. Instead, the rule order has been drafted using conditional language, and is being proposed now to ensure that the authority is available should the improvements under consideration prove workable. For example, computer software is being reviewed that offers the potential to track extra orders per week, for which the cost could be programmed to be billed to the retailer. Having the authority clearly stated well before implementation will provide the lottery with useful preparation time, in which retailers can be notified and given ample opportunity to review the initiative.

**Conclusion:** As of the date of promulgation, and for at least a calendar year after, there will be no effect on lottery retailers. Any intended activation of the rule would only be completed after significant notice of the event to all retailers, with retailers being given meeting opportunities with Lottery administration.

#### ***Reselling Controls, proposed***

The issue of restricting the act of reselling of tickets to others, found in Section 12, is not easily quantified. However, there is anecdotal information that indicates many lottery players engage in some form of 'buy-tickets-for-friends' behavior. For example, husbands buy for wives and vice versa when they go fill up the car with gas, co-workers buy for each other when they stop at a store for a soda, and neighbors pick up an extra ticket for the neighbor that mowed their lawn when they were on vacation. Sometimes these purchases are gifts, and other times the buyer is doing the other person a favor to save time, and is reimbursed for the ticket.

To determine the extent of public awareness of this practice, the lottery gathered data on a Likert scale rating question as part of a recent market segmentation study. The question asked respondents if they strongly agree, somewhat

agree, slightly agree, have no opinion, slightly disagree, somewhat disagree, or strongly disagree with this statement: “*I sometimes buy scratch games as gifts for friends or family.*” Respondents were asked pick the answer that best matched their behavior.

**Public perception:** Of 327 valid respondents, the top three “boxes” (responses ranging from slightly agree to strongly agree) show that 63.9% of respondents do in fact feel that they buy a lottery ticket for someone else at least sometimes, while only 21% responded that they have virtually no propensity to buy tickets as gifts. The question was not researched particularly in support of this rule order, but rather was part of a much larger market segmentation study which is refreshed every two years by an independent, contracted research firm. The data was collected during the month of June, 2006, in a state-wide survey process. While not strongly quantitative, the result does reinforce the notion that a lottery ticket is viewed by the majority as a potential gift or favor to someone else. Implementing a ban on this would not only prove effectively impossible to enforce, but also appears contrary to lottery culture as viewed by player citizens.

**Illicit behaviors noted:** In contrast to the positive perceptions noted above, it has unfortunately come to the attention of the lottery industry that there are ‘subscription services’ forming via telephone, postal mail and on the Internet. These services offer to wager on behalf of a player, usually at the price of a ticket plus a service charge, and send him or her tickets either via some electronic means or through the mail. Depending on circumstances, mailing lottery tickets ordered by telephone or via the Internet may violate federal laws. Worse, the services are often structured so as to act as an “agent” or “retailer” of lottery products without actually holding a valid lottery retailer license in the state in question. Further, the industry occasionally uncovers unscrupulous practices, wherein players do not receive the promised ticket or instead receive a ‘ticket’ that somehow violates one or more of the fair lottery concepts of random chance, consideration or prize.

**Impact on small business:** It is difficult to identify the number or range of impact these self-styled ‘retailers’ have upon lottery retailers or players, but some loss of retail sales opportunity is occurring. The Wisconsin Lottery has proposed language that permits ‘friend and family’ purchasing but bans subscription services, and has also adopted language from the adjacent states to address issues of “service fees” and “charging to validate”, found under Sections 3, 4 and 5.

**Conclusion:** The impact upon lottery retailers of this language change should be negligible to slightly positive. The language does not ban ‘friend or family’ purchases as gifts (which would be sold by retailers), but does clarify that it is illegal for unscrupulous parties to pretend to be a legitimate retailer when they are not or to apply service fees or validation charges to players.

#### **Billing Terms Authority, proposed**

The remaining issue of billing terms as proposed under Sections 1 and 8 to 10 has been analyzed at several levels. The lottery is clarifying authority with respect to being able to offer new, more retailer-friendly billing terms, consistent with changes to s.565.10(15), made as part of 2005 Wis. Act 25, s. 2427b. Language is proposed in this rule order that mirrors statutory authority, and requires the lottery to create and maintain a new policy document, called the “Billing Terms Policy and Procedure” document, which will outline billing terms in concise and retailer-friendly terminology. This document will be maintained similar to lottery’s current product “Features and Procedures” documents, under

s.565.27 (1), Stats. The document will draw its authority from the language in this rule order.

**Background:** The lottery currently bills a retailer this week for a pack of tickets delivered last week. Most retailers’ accounts are then swept by banking electronic file transfer (EFT) within 5 days of the day the liability is recognized. To help offset the amount of cash the retailer must keep on hand to pay for the packs, the lottery discounts from the price the full value of the retailer’s commission, and also discounts an estimate of the amount of guaranteed low-end prizes (or GLEPS), those prizes which are worth \$49 or less and randomly enclosed the pack.

For example, a pack of 400 tickets is priced at \$400, but the retailer is first credited \$25 (equal to the 6.25% commission) and then an additional credit estimated at roughly \$162.50 when the pack is billed, to cover the GLEPS prizes of that game which the retailer will likely pay out in the future. The retailer then owes \$212.50 the week after the pack is delivered for sale, calculated as \$400 – (\$25 + \$162.50). While the GLEPS value is a necessity of product design, it varies by game and can cause confusion for retailers.

This GLEPS Discount process was once considered industry-standard, but is now significantly outdated. Several industry developments have occurred since 1989, including cross-validation, the ability of one retailer to redeem winning tickets sold by another retailer. These developments have caused GLEPS Discount billing to be difficult to learn and sometimes confusing. Further, the current billing practices do not lend themselves to cash accounting, and do not align well with incentive promotions and other business practices of Lottery retailers.

**New billing terms considered:** The lottery is moving forward with new billing terms, and has researched and discussed terms including “*net 45 days, 75% validation*”, “*net 30 days, 75% validation*” and “*net 30 days*”, among other options. The concept of terms of *net X days* is well known to retailers, as many of their wholesale suppliers offer very similar terms. Under this concept, a retailer has x days from delivery to sell a unit of product, before being asked to pay the wholesaler for it. The concept of “*75% validated*” is a similar process unique to the lottery industry, wherein a pack is billed when the lottery identifies that 75% of the tickets in the pack have been computer-scanned for validation. Therefore terms of “*net X days or 75% validated*” would mean that a retailer is billed for the pack when X days have passed or when the pack is 75% validated, whichever comes first.

Consistent with s. 227.114 (4) (b), Stats., the lottery has contacted representative trade associations as well as corporate and independent retailers, to receive feedback about the billing terms options. The intent to change the terms has been discussed, both regarding changes to the time between delivery and billing, as well as regarding the types of mathematic terms the retailer might experience. The agency also reviewed the impact upon its revenue stream, by considering a range of alternative billing terms.

**Feedback:** The responses from lottery retailers thus far have been generally very positive, with few negative comments focused primarily in one area. In particular, retailers with headquarters or outlets in adjacent states have experience with net X days and 75% validation tracking. From their feedback, retailers prefer by a wide margin the net X days, with no validation percentage tracking. Their reasoning is that the validation percentage causes confusion, as retailers don’t know and can only guess when the pack will come due for payment. It may come due earlier than expected if a large number of validations occur, thereby making planning for the payment and related cash handling more difficult. Ideally, billing terms that are purely net 30 days

allow retailers to plan that in the fourth week, the payment of a pack will be due, regardless. This style of billing is consistent with many of the other wholesaler/ distributor relationships that retailers maintain. It also allows the retailer significantly more time to sell the product and retain the cash necessary to meet the future obligation of the pack cost.

**Impact on small business:** While retailers receive more time, under new terms, to sell through a pack of tickets, they could in theory be responsible for a somewhat larger sticker price for each pack. This is because lottery intends to greatly simplify the accounting of lottery packs by eliminating the discounting of GLEPS that normally occurs when the pack is billed. This, and its related cross-redeem calculations, are the source of much confusion among retailers accountants. The lottery intends to keep the commission discounting on the pack price, but not GLEPS discounting. Therefore, instead of a pack of 400 tickets that costs \$212.50 the week after it is shipped, the retailer will be billed for a pack of 400 tickets that costs \$375.00 the fourth week after it is shipped, allowing more time for the retailer to sell the product. Also, the retailer will still be receiving credits each week for winners actually scan-validated, consistent with how the current system provides credits. The combination of more time to sell the product and the continuation of currently-offered credits for validations will help ease the financial impact of the perceived sticker price of a pack.

**Related improvements to aid retailers:** To further alleviate the financial impact on retailers, the lottery has changed the base ticket count of all \$1 dollar scratch ticket packs. The lottery identified 300 count packs as a better fit with the product life cycle of \$1 games, rather than the 400 ticket packs currently used. This change will help retailers sell through the pack faster, thereby avoiding having too many tickets unsold when the billing comes due. As of Game #711 *Moola Tripler*, launched in June of 2007, the count of tickets dropped from 400 tickets to 300 tickets per pack, for \$1 game titles.

Continuing the comparison above, a 300-count pack of \$300 under the current billing method would cost an estimated \$162 instead of \$212.50. Further, a pack valued at \$300 and offered at net 28 days (possible new terms) would cost \$281.25 the fourth week after it is shipped. When a 400 count pack and a 300 count pack are compared, using net 28 days, the difference is \$93.75 less in cost to the retailer (\$375.00 vs. \$281.25), for the same price point and same amount of time to sell. Ultimately, for a 300-count pack with net 28 days terms, a retailer would have an additional three weeks in which to sell the pack and will still be receiving the validation credits as noted above. Given current selling behaviors, the lottery anticipates that an average retailer will sell through the pack mid-week 3, well before the expense comes due, and therefore have the cash already on hand to pay the bill. Overall, the potential change in billing terms to a 28-day cycle will not have a negative effect on the winning credits the retailer receives, nor will it have a negative effect on the retailer's commissions.

**Intended implementation:** The agency has considered the positive retailer feedback regarding retailer accounting and cash handling, as well as the impact that net X days terms has on the cash handling of retailers, and has committed to drafting the first Billing Terms Policy and Procedure document in such manner as to offer net 28 day terms without validation tracking as the new retailer billing terms, consistent with retailer feedback. Net 28 days is easier to understand and is as close as the lottery can match to the "net 30 days" terms of similar retail wholesalers. This will allow retailers at least 28 days to sell through a pack before it is billed, and will result in simpler accounting methods. This change also allows the lottery to consider shorter terms for retailers who may be at

financial risk or who fail to maintain good payment history, which in turn will reduce the lottery's exposure to the financial risk that less well organized or less responsible retailers may pose. The document will also address relevant issues such as electronic funds transfer (EFT) banking options, and the rights of retailers with respect to ticket inventory returns. Other subject matter will be added as necessary. A first draft of the document will be available for public review the week before the public hearing for this rule order, and can be requested via the contact information that follows.

**Conclusion:** Ultimately, the combination of new billing terms, reinforced by new pack size, should help ease the financial and labor burdens that lottery billing currently places upon retailers. The impact will ultimately be a reduction in expense per pack, once all the aspects of net 28 days billing terms are in place. Therefore, the impact on lottery retailers will be slightly to significantly positive, depending on each retailer's sales history.

### Fiscal Estimate

1. **Billing Terms.** The rule increases from 1 week to up to 60 days the length of time for retailers to pay the department for lottery tickets received in the prior 60 days. 2005 Act 25, providing for the change in the length of the billing period, first affected renewals of contracts over two years ago. The law change may reduce lottery interest earnings depending on the new billing terms of the new contracts, the timing and volume of sales by retailers, and the interest rate earned by the department. The potential decrease may be illustrated by an example. Assuming statewide daily ticket sales are \$1 million and the lottery earns 4% annual interest, if retailers transfer sales proceeds of \$7 million to the department each week, annual interest earnings would be \$7.1 million; if sales proceeds of \$30 million are transferred each month, annual interest earnings would be \$6.6 million, a decrease of \$0.5 million.

2. **Service and handling fees; off-premises and bulk sales of tickets.** The rule prohibits a retailer from adding a service or handling fee to the purchase of a lottery ticket or the redemption of a winning ticket, unless authorized by the Lottery Administrator. In addition, the rule prohibits retailers from selling lottery tickets to off-premises customers by telephone, email, or other electronic means, or by mail, parcel, or other delivery service, unless authorized by the Lottery Administrator. The rule also prohibits a retailer from reselling tickets in bulk to another retailer. These prohibitions are consumer protections and are not expected to affect lottery revenues.

3. **Shipping charges.** The rule would allow the Department to charge a retailer for the actual cost of shipping lottery tickets on a date other than the retailer's scheduled delivery date. To the extent retailers place orders for delivery on dates other than the scheduled deliveries, revenues would increase in the amount of the shipping costs.

4. **Outstanding debts.** Currently, retailers may not receive additional tickets until prior tickets have been paid for in full. Under the rule, retailers would be allowed to receive additional tickets if they have a payment agreement with the Lottery Administrator to settle debts to the Lottery. By allowing some retailers to continue selling lottery tickets, this provision may prevent decreases in lottery ticket sales. In addition, the rule allows the Department to waive penalties for retailers that voluntarily disclose violations of Lottery rules, guidelines, or contract terms.

5. **Point-of-sale materials.** Currently, the Lottery provides retailers with point-of-sale materials including posters, decals, and brochures. Under 2005 Act 25, the Lottery is



required to provide retailers with signs indicating the games for which the top prize has already been claimed. Prizes—claimed signs are printed using on—premises Lottery terminals and paper, and the cost is immaterial.

6. Other provisions. The rule makes several technical changes to the Retailer Performance Program to align the rule with the underlying law. In addition, the rule clarifies the grounds for termination of contracts with retailers. These provisions are not expected to have fiscal effects.

## Notice of Hearing Transportation [CR 07–084]

NOTICE IS HEREBY GIVEN that pursuant to s. 85.30, Stats., and interpreting ss. 85.16 (1), 227.11, 343.06 (1) (c), 343.07 (4) (b) and 343.16 (1) (a), Stats., the Department of Transportation will hold a public hearing in **Room 551** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **30th** day of **October, 2007**, at **1:00 PM**, to consider the amendment of ch. Trans 129, Wis. Adm. Code, relating to motorcycle courses.

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

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

### Analysis Prepared by the Department of Transportation

#### *Statutes interpreted*

Sections 85.30, 343.06 (1) (c), 343.07 (4) (b) and 343.16 (1) (a), Stats.

#### *Statutory authority*

Sections 85.16 (1), 85.30 and 227.11, Stats.

#### *Explanation of agency authority*

Under the law, the Department is responsible for the motorcycle safety program. That requirement includes establishment and approval of motorcycle rider courses.

#### *Related statute or rule*

Chapter Trans 105

#### *Plain language analysis*

This rule making will amend ch. Trans 129, relating to motorcycle courses, by changing the maximum number of motorcycles allowed on the range as prescribed in the Basic Rider Course and Experienced Rider Course curriculums developed by the Motorcycle Safety Foundation (MSF). It will also require a 10–day reporting time frame for site inspection reports. Finally, it will make changes necessary as a result of removing private motorcycle training schools from ch. Trans 105 including background checks, and insurance and bond requirements.

#### *Comparison with federal regulations*

32 CFR 536.28(h) requires persons operating motorcycles on Fort Stewart Georgia to attend an approved motorcycle defensive driving course.

#### *Comparison with adjacent states*

**Michigan:** R257.1701–7727, Michigan Administrative rules. The Michigan motorcycle safety education rules are similar but the course is based upon the Motorcycle Safety Foundation standards entitled, Motorcycle Rider Course,”

January 1989. Michigan appears to provide more public funding than Wisconsin for students of the course.

**Illinois:** 92 Ill. Adm. Code 455. The proposed rule of Illinois incorporates by reference the most current editions of the Motorcycle Safety Foundation’s Rider Coach Guide and Rider Course Suite. The current Illinois rule is similar to but more detailed than the proposed Wisconsin rule. The rule provides for more state funding than Wisconsin. The proposed Illinois rule has higher insurance limits than the proposed Wisconsin rule but no bonding requirement.

**Iowa:** 76 Iowa Adm. Code 635. The Iowa Motorcycle Rider Education rules are similar to the proposed Wisconsin rules but classroom size has not been reduced, insurance requirements are higher, they do not refer specifically to the Motorcycle Safety Foundation courses and there is not a bonding requirement.

**Minnesota:** Ch. 7411, Minn. Adm. Code. The Minnesota motorcycle rider training rules are similar to the proposed Wisconsin rules. They do incorporate the Motorcycle Safety Foundation Basic Rider Course Manual, 2001.

#### *Summary of factual data and analytical methodologies*

This proposed rule does not change the regulatory approach chosen. It continues to follow the procedures and curriculum proscribed by the Motorcycle Safety Foundation as they have been updated. It also includes some regulations previously applicable but removed from ch. Trans 105 as a result as the change in the definition of driver schools.

#### *Analysis and supporting documentation used to determine effect on small businesses*

There were approximately 10,000 Motorcycle Safety students in public school courses and 3,000 students in commercial rider education schools each year. The vast majority of the schools comply with current Motorcycle Safety Foundations requirements, and proposed rule change, as to class size and number of motorcycles allowed on the range. Some of the commercial schools may not currently have bonding. Bond costs for entities with good credit are minimal.

#### **Small Business Analysis**

These proposed changes will have minimal effect upon small businesses. The Department’s Regulatory Review Coordinator may be contacted by e–mail at [ralph.sanders@dot.state.wi.us](mailto:ralph.sanders@dot.state.wi.us), or by calling (414) 438–4585.

#### **Fiscal Estimate**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally–recognized tribes or bands.

#### **Anticipated Costs Incurred by Private Sector**

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

#### **Contact Person and Submission of Written Comments**

The public record on this proposed rule making will be held open until close of business **November 6, 2007**, to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Ron Thompson, Department of Transportation, Division of State Patrol, Transportation Safety Programs, Room 551, P. O. Box 7936, Madison, WI 53707–7936. You may also contact Mr. Thompson by phone at (608) 266–7855 or via e–mail: [ron.thompson@dot.state.wi.us](mailto:ron.thompson@dot.state.wi.us).

**Copy of Rule**

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

**Notice of Hearing**  
**Veterans Affairs**  
**[CR 07-083]**

NOTICE IS HEREBY GIVEN that the Department of Veterans Affairs will hold a public hearing on the **19<sup>th</sup> day of October, 2007** at 9:30 a.m., in the Wisconsin Army National Guard Armory, 475 Water Street, at Platteville, Wisconsin.

**Analysis Prepared by the Department of Veterans Affairs***Statutory authority*

Section 45.20 (2) (f), Stats.

*Statute interpreted*

Section 45.20 (2) (f), Stats.

The amending of s. VA 2.02 (3) (b) will allow the department to address pre-application issues for veterans who are returning from deployment and are unable to submit pre-applications within the current 30-day period allotted by

the rule. The rule language will extend the period for submitting a pre-application to 180 days following the commencement of a semester or course.

There is no current or pending federal regulation that addresses this initiative. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant fiscal impact upon the private sector.

**Initial Regulatory Flexibility Analysis**

This rule is not expected to have any adverse impact upon small business.

**Fiscal Estimate**

The implementation of this rule is expected to result in an increase in expenditures in FY08 of \$122,600 and \$132,400 in FY09.

**Copy of Rule**

A copy of the proposed rule and the full fiscal estimate may be obtained by contacting:

James A. Stewart  
Wisconsin Department of Veterans Affairs  
P.O. Box 7843  
Madison, WI 53707-7843

**Contact Person**

James A. Stewart (608) 266-3733  
[Jimmy.stewart@dva.state.wi.us](mailto:Jimmy.stewart@dva.state.wi.us)

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## Submittal of Proposed Rules to the Legislature

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

**Agriculture, Trade and Consumer Protection**  
**(CR 07-006)**

Chs. ATCP 60, 69, 77, 80 and 82, relating to safe production, processing, distribution and sale of milk and dairy products.

**Transportation**  
**(CR 07-065)**

Ch. Trans 128, relating to the traffic violation and registration program.

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## Rule Orders Filed with the Revisor of Statutes Bureau

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*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.wisconsin.gov](mailto:gary.poulson@legis.wisconsin.gov) or (608) 266-7275 for updated information on the effective dates for the listed rule orders.*

### **Commerce (CR 07-032)**

An order affecting ch. Comm 47, relating to the usual and customary cost schedule for petroleum environmental cleanup fund awards (PECFA).

Effective 11-1-07.

### **Health and Family Services (CR 07-042)**

An order affecting chs. HFS 83, 88, 89, 132, and 134, relating to facility reporting of involuntary administration of psychotropic medication and affecting small businesses.

Effective 11-1-07.

### **Workforce Development (CR 07-019)**

An order affecting chs. DWD 80 and 81, relating to worker's compensation.

Effective 11-1-07.

### **Workforce Development (CR 07-030)**

An order affecting ch. DWD 56, relating to child care rates.

Effective 11-1-07.

### **Workforce Development (CR 07-038)**

An order affecting chs. DWD 111 and 123, relating to unemployment insurance benefit reports filed by employers.

Effective 11-1-07.

### **Workforce Development (CR 07-039)**

An order affecting ch. DWD 130, relating to wages for unemployment insurance benefit purposes.

Effective 11-1-07.

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# Rules Published with this Register and Final Regulatory Flexibility Analyses

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*The following administrative rule orders have been adopted and published in the September 30, 2007, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

## **Agriculture, Trade and Consumer Protection (CR 06-130)**

An order affecting ch. ATCP 112, relating to credit report security freezes. Effective 10-1-07.

### **Summary of Final Regulatory Flexibility Analysis**

This rule interprets part of a state statute related to consumer credit report "security freezes" (s. 100.54, Stats., created by 2005 Wis. Act 140), and requires a consumer reporting agency to implement written compliance procedures. This rule will help protect Wisconsin consumers from becoming victims of identity theft. This rule will help consumer reporting agencies understand what information they can request of consumers who ask to create or release a "security freeze" on their consumer credit reports.

This rule will have a generally positive impact on business. This rule only affects consumer reporting agencies. There are only 3 major consumer reporting agencies in the United States, and none of them is a small business.

Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22 (2) (e), Stats.

### **Summary of Comments by Legislative Review Committees**

The rule was assigned to the Senate Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection and to the Assembly Committee on Financial Institutions. The Assembly Committee on Financial Institutions held a hearing on June 14, 2007 and sent the rule back to DATCP requesting the department to modify the rule to better clarify what constitutes proof of identity to release a credit report or remove a security freeze.

The Department considered this request and modified the rule by adding a "Note" that clarifies what constitutes proof of identity to release a credit report or remove a security freeze.

The requested modifications were returned to the Committees on July 17, 2007. After receiving the rule with the requested modifications, neither the Assembly nor the Senate Committee took further action.

## **Commerce (CR 06-127)**

An order affecting ch. Comm 5, relating to credentials for storage of flammable, combustible, and hazardous liquids, and for cleanup of properties contaminated by petroleum-product discharges. Effective 10-1-07.

## **Summary of Final Regulatory Flexibility Analysis**

The Wisconsin Statutes authorize the Department to issue numerous credentials as part of the Department's responsibility for protecting the safety and health of frequenters and occupants in public buildings and places of employment, and for protecting the waters of the State from improper storage, handling and use of flammable or combustible liquids, or federally regulated hazardous substances. These revisions in the Department's credential rules are minimum requirements to meet the directives of the Statutes, and any less stringent requirements for small businesses would be contrary to the Statutory objectives that are the basis of the rules.

The only submitter of comments suggested increasing the included credential terms from 2 years to 4 years, and changing the renewal of those terms to coincide with a State fiscal year. Changing the current practice of issuing renewals throughout each year to instead issuing renewals at the beginning or end of a State fiscal year would undesirably compress the Department's corresponding workload into a much shorter time period. Changing the credential term from 2 years to 4 years would undesirably increase the time periods during which credential holders could allow their renewal qualifications to lapse, such as the qualifications relating to liability-insurance coverage and continuing education.

Other than a \$50 biennial fee for certifications to perform cathodic protection activities, the rules should not impose any significant costs on small businesses. The new certification requirements for cathodic protection activities are not significantly more restrictive than current, corresponding federal requirements. Although the proposed deletion of continuing-education requirements for three certification categories will reduce costs for individuals in those categories, that reduction may be offset by codifying a common practice of tank specialty firms to have contractor liability insurance coverage. Outreach to adjacent States and to firms currently performing these activities indicate that this insurance is similarly required in the adjacent States, readily available, commonly held, beneficial, and reasonably priced.

### **Summary of Comments by Legislative Review Committees**

No comments were received.

## **Health and Family Services (CR 07-053)**

An order repealing ch. HFS 119, relating to the health insurance risk-sharing program. Effective 10-1-07.

### **Summary of Final Regulatory Flexibility Analysis**

Not applicable. This is an order to repeal ch. HFS 119 because the Department's authority to operate the Health Insurance Risk-Sharing Plan (HIRSP) was transferred, under

2005 Act 74, to the Health Insurance Risk-Sharing Plan Authority effective July 1, 2006.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Insurance  
(CR 07-023)**

An order affecting ch. Ins 50, relating to annual audited financial reports, annual financial statements and examinations. Effective 10-1-07.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Natural Resources  
(CR 07-015)**

An order affecting chs. NR 10, 16, 19, and 45, relating to hunting and trapping regulations. Effective 10-1-07.

**Summary of Final Regulatory Flexibility Analysis**

The proposed rule relating to hunting, trapping, closed areas, fur farms, feeding wild animals and the use of public lands is applicable to individual sportspersons and imposes no

compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

**Summary of Comments by Legislative Review Committees**

The proposed rule was reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. On July 18, 2007, the Assembly Committee on Natural Resources held a public hearing. As a result of that hearing, the Assembly Committee on Natural Resources adopted a motion requesting modifications to the portion of the rule relating to the pilot program for hunting turkeys with dogs. The Committee wanted to add another year to the experimental season so that it would run through 2009 before sunseting.

The Department declined to make the change to Clearinghouse Rule No. 07-015, but did propose accommodating that request in the upcoming 2008 Wildlife Management housekeeping rule package. The Department's reasoning was that by not making the change in Clearinghouse Rule No. 07-015, the rule could be effective on October 1, 2007 thereby allowing turkey hunting with the aid of dogs in the pilot area during the majority of the 2007 season which was proposed to start on September 15. This would effectively give hunters the majority of the 2007 season, as well as seasons in 2008 and 2009. The Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources accepted the Department's proposal for extending the pilot program.

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## Sections Affected by Rule Revisions and Corrections

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The following administrative rule revisions and corrections have taken place in **September 2007**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### Revisions

#### Agriculture, Trade, and Consumer Protection

##### Ch. ATCP 112 (Entire Chapter)

#### Commerce

##### Ch. Comm 5

- S. Comm 5.003 (9), (10m), (17m), (18) and (19)
- S. Comm 5.02 (49), (54g) and (54r)
- S. Comm 5.06 (42), (49) to (53), (54g) and (54r)
- S. Comm 5.07 (2) (b)
- S. Comm 5.08 (1) (e), (g) and (h)
- S. Comm 5.10 (1) (a)
- S. Comm 5.68 (1), (3), (6) and (7) (b)
- S. Comm 5.80 (2) (e) and (5) (c)
- S. Comm 5.81 (2) (d) and (4) (c)
- S. Comm 5.82 (1), (2) (c), (4), (5) (a), (b) and (c)
- S. Comm 5.83, (1) (2), (3), (4), (5) (a) and (b)
- S. Comm 5.84 (1) and (5) (e), (f) and (g) and (7)
- S. Comm 5.85 (1) and (5) (e) and (i)
- S. Comm 5.86 (1) and (5) (a) and (f) to (m), (6) (a) and (b)
- S. Comm 5.87 (1), (2) (c), (6) and (7)
- S. Comm 5.88 (1), (3) and (4) (a)
- S. Comm 5.89

#### Health and Family Services

##### Ch. HFS 119 (Entire Chapter)

#### Insurance

##### Ch. Ins 50

- S. Ins 50.01 (4m)
- S. Ins 50.08 (1) (am)
- S. Ins 50.10

#### Natural Resources

##### Ch. NR 10

- S. NR 10.01 (3) (bm), (c), (e), (em), and (g)
- S. NR 10.06 (6) (m) to (v)
- S. NR 10.09 (1) (a)
- S. NR 10.10 (1) (b)
- S. NR 10.102 (1) (d)
- S. NR 10.104 (15)
- S. NR 10.13 (1) (b)
- S. NR 10.25 (4) (c)
- S. NR 10.28 (1)
- S. NR 10.29
- S. NR 10.30

##### Ch. NR 16

- S. NR 16.18 (5) (c)

##### Ch. NR 19

- S. NR 19.51
- S. NR 19.60 (2) (d)

##### Ch. NR 45

- S. NR 45.09 (2)

### Editorial corrections

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing.

#### Natural Resources

##### Ch. NR 700

- S. NR 700.02 (3) (b)

##### Ch. NR 712

- S. NR 712.11 (1) (f)

##### Ch. NR 718

- S. NR 718.02 (1) (a) and (b)
- S. NR 718.03 (5)
- S. NR 718.09 (8) (b)

##### Ch. NR 720

- S. NR 720.02 (1) (b)

- S. NR 720.03 (12) (c)

- S. NR 720.05 (1) (c)

##### Ch. NR 738

- S. NR 738.01

- S. NR 738.02

- S. NR 738.04 (2) and (3) (b)

- S. NR 738.045 (3)

- S. NR 738.08 (6) and (8)

##### Ch. NR 750

- S. NR 750.05 (2) (a)

### Errata

#### Natural Resources

##### Ch. NR 460 (pagination)

##### Ch. NR 463 (pagination)

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## Sections Affected by Revisor's Corrections Not Published

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**Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.**

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

Location of invalid cross-reference	Invalid cross-reference	Correction
Adm 43.10 (1)	16.957 (2) (a) and (b) 1., Stats.	16.957 (2) (a), Stats.
Tax 6.40 (2) (c) (intro.)	70.11 (21) (a), Stats.	70.11 (21) (am), Stats.
Tax 11.11 (2m) (b), 11.57 (5) and 11.68 (4) (d)	70.11 (21) (a), Stats.	70.11 (21) (am), Stats.



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## Executive Orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 209.** Relating to a Proclamation Declaring a State of Emergency.

**Executive Order 210.** Relating to a Proclamation Declaring a State of Emergency Relating to the Transportation of Emergency Relief Supplies.

**Executive Order 211.** Relating to an Amendment to Executive Order No. 209 Relating to a Proclamation Declaring a State of Emergency.

**Executive Order 212.** Relating to a Proclamation of a State of Emergency Relating to the Inspection of Dams.

**Executive Order 213.** Relating to an Amendment to Executive Order No. 209 Relating to a Proclamation Declaring a State of Emergency.

**Executive Order 214.** Relating to a Proclamation of a State of Emergency Relating to the Permitting of Replacement Bridges and Culverts.

**Executive Order 215.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Captain Derek Dobogai of the United States Army Who Lost His Life During Operation Iraqi Freedom.

**Executive Order 216.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Specialist Alun Howells of the United States Army Who Lost His Life During Operation Iraqi Freedom.

**Executive Order 217.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff to Commemorate the Six Year Anniversary of the Terrorist Attacks on the United States.

**Executive Order 218.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Corporal Keith Nurnberg of the United States Army Who Lost His Life During Operation Iraqi Freedom.

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## Public Notices

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### Workforce Development

**DWD 40.04 (4) (b)** The department shall revise the schedule in Appendix C at least once every 4 years. The revision shall be based on changes in the federal poverty guidelines since the schedule was last revised. The department shall publish revisions to the schedule in the Wisconsin Administrative Register.

**Note:** The schedule in Appendix C provides reduced percentage rates that may be used to determine the child support obligation for payers with an income below approximately 125% of the federal poverty guidelines. If a payer's monthly income available for child support is below approximately 75% of the federal poverty guidelines, the court may order an amount appropriate for the payer's total economic circumstances. For monthly income amount for child support between approximately 75% and 125% of the federal poverty guidelines, the percentage rates in the schedule gradually increase as income increases. The percentage rates used in s. DWD 40.03 (1) apply to payers with income greater than or equal to approximately 125% of the federal poverty guidelines.

#### Chapter DWD 40

#### Appendix C

#### Child Support Obligation of Low-Income Payers\*

Monthly Income Up To	One Child		Two Children		Three Children		Four Children		Five Children	
	Percent	Child Support Amount	Percent	Child Support Amount	Percent	Child Support Amount	Percent	Child Support Amount	Percent	Child Support Amount
650.00	11.13%	\$72	16.37%	\$106	18.99%	\$123	20.30%	\$132	22.27%	\$145
675.00	11.50%	\$78	16.91%	\$114	19.62%	\$132	20.97%	\$142	23.00%	\$155
700.00	11.86%	\$83	17.45%	\$122	20.24%	\$142	21.64%	\$151	23.74%	\$166
725.00	12.23%	\$89	17.99%	\$130	20.87%	\$151	22.31%	\$162	24.47%	\$177
750.00	12.60%	\$94	18.53%	\$139	21.49%	\$161	22.97%	\$172	25.20%	\$189
775.00	12.96%	\$100	19.07%	\$148	22.12%	\$171	23.64%	\$183	25.94%	\$201
800.00	13.33%	\$107	19.61%	\$157	22.74%	\$182	24.31%	\$194	26.67%	\$213
825.00	13.70%	\$113	20.15%	\$166	23.37%	\$193	24.98%	\$206	27.40%	\$226
850.00	14.06%	\$120	20.68%	\$176	23.99%	\$204	25.65%	\$218	28.13%	\$239
875.00	14.43%	\$126	21.22%	\$186	24.62%	\$215	26.32%	\$230	28.87%	\$253
900.00	14.80%	\$133	21.76%	\$196	25.25%	\$227	26.99%	\$243	29.60%	\$266
925.00	15.16%	\$140	22.30%	\$206	25.87%	\$239	27.66%	\$256	30.33%	\$281
950.00	15.53%	\$148	22.84%	\$217	26.50%	\$252	28.32%	\$269	31.07%	\$295
975.00	15.90%	\$155	23.38%	\$228	27.12%	\$264	28.99%	\$283	31.80%	\$310
1,000.00	16.27%	\$163	23.92%	\$239	27.75%	\$277	29.66%	\$297	32.53%	\$325
1,025.00	16.63%	\$170	24.46%	\$251	28.37%	\$291	30.33%	\$311	33.27%	\$341
1,050.00	17.00%	\$179	25.00%	\$262	29.00%	\$305	31.00%	\$326	34.00%	\$357

\*Effective January 1, 2008

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