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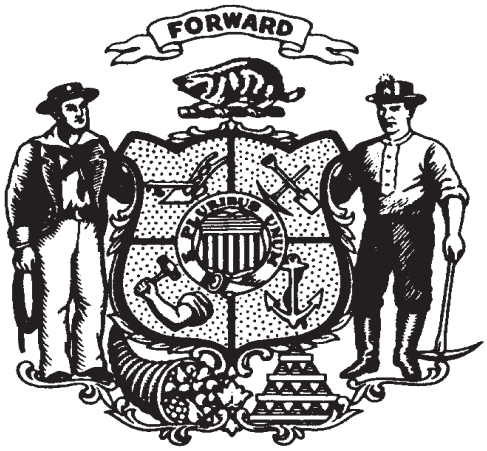

Publication Date: December 1, 2007
Effective Date: December 15, 2007

Revisor of Statutes Bureau
http://www.legis.state.wi.us/rsb/code.htm

Notice to Subscribers

On December 31, 2007 the responsibility of editing and publishing the Wisconsin Administrative Code and the Wisconsin Administrative Register will be transferred from the Revisor of Statutes Bureau to the Legislative Reference Bureau.

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Gary Poulson
Revisor of Statutes Bureau

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Emergency Rules Now in Effect

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection

Rules adopted revising **ch. ATCP 10**, relating to diseases of fish and farm−raised deer.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP") administers Wisconsin's animal health and disease control programs, including programs to control diseases of fish and farm−raised deer.

Disease Testing of Fish

(2) DATCP regulates fish farms, including fish farms operated by the Wisconsin Department of Natural Resources ("DNR"). DATCP also regulates the import, movement and disease testing of fish.

(3) Viral hemorrhagic septicemia (VHS) is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms. VHS can be fatal to fish, but is not known to affect human beings.

(4) Current DATCP rules require health certificates for fish and fish eggs (*including bait*) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish and fish eggs (including bait species) moved between fish farms in this state. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources, for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between fish farms in Wisconsin, or for non−salmonids imported from states where VHS has not yet been found.

(5) Because VHS has now been found in waters of the state, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to adopt VHS testing requirements by emergency rule, pending the adoption of a "permanent" rule.

Disease−Free Herd Certification of Farm−Raised Deer Herds

(6) DATCP registers farm−raised deer herds in this state. DATCP also regulates the import, movement and disease testing of farm−raised deer. Under current DATCP rules, DATCP may certify a deer herd as brucellosis−free or tuberculosis−free, or both, based on herd test results provided by the deer keeper. Certification is voluntary, but facilitates sale and movement of deer.

(7) Under current rules, a tuberculosis−free herd certification is good for 3 years, but a brucellosis−free herd certification is good for only 2 years. There is no compelling veterinary medical reason for the difference. A rule change (extending the brucellosis−free certification term from 2 to 3 years) is needed to harmonize the certification terms, so that deer farmers can conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. An emergency rule is needed to avoid some unnecessary costs for deer farmers this year, pending the adoption of permanent rules.

Publication Date:	**October 31, 2007**
Effective Date:	**October 31, 2007**
Expiration Date:	**March 29, 2008**
Hearing Dates:	**January 7, 8, and 10, 2008**
	[See Notice this Register]

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:	**June1, 2007**
Expiration Date:	**See section 7 (2), 2005 Wis. Act 456**
Hearing Date:	**June 27, 2007**

Commerce (2) (Amusement Rides, Ch. Comm 34)

1. 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**

2. Rules adopted revising **ch. Comm 34**, relating to amusement rides and affecting small businesses.

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.

2. The department is in the processing of promulgating rule revisions under its Amusement Ride Code, chapter Comm 34 to address two issues that have come to light as a result of the accident investigation. The completion of this rule−making process and their enactment cannot occur prior to the beginning of the 2008 amusement ride season. The issuance of the emergency rules at this time is also necessary to allow amusement ride owners and operators sufficient time to acquire the necessary issuance.

3. The department believes that establishing liability insurance obligations for amusement ride owners and operators will promote safety.

Publication Date:	**November 12, 2007**
Effective Date:	**January 1, 2008**
Expiration Date:	**May 30, 2008**
Hearing Date:	**December 12, 2007**

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

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

Exemption From Finding of Emergency

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

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

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

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

Dentistry Examining Board

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**

Elections Board

Rules adopted creating **s. ElBd 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**

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**
Hearing Date:	**June 12, 2007**
Extension Through:	**November 25, 2007**

Natural Resources (3)
(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**

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

Finding of Emergency

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

The World Health Organization for Animal Health (OIE) lists Viral Hemorrhagic Septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts (part of the Lake Winnebago system) were infected with the VHS virus. On May 23, May 24, and June 1, respectively, the Department learned that brown trout from Lake Michigan, smallmouth bass from Sturgeon Bay, and lake whitefish from Lake Michigan had tested positive for the virus.

Earlier, VHS had been discovered in the Great Lakes, and was known to be 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 basin. Information obtained pursuant to an emergency rule that took effect May 17 revealed that 88 bait dealers harvest live wild minnows from a large number of state waters, including waters that are near or connected to the Mississippi river, the Lake Winnebago system, Green Bay and Lakes Michigan and Superior.

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. It is expected the USDA APHIS will soon expand its emergency order limiting the interstate transportation of these species to apply to all fish species. The VHS virus can be transported from infected 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 Wisconsin is therefore a threat to the public health or safety or to the environment.

Publication Date:	**November 2, 2007**
Effective Date:	**November 2, 2007**
Expiration Date:	**March 31, 2008**
Hearing Date:	**December 3, 2007**

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**
Extension Through:	**January 5, 2008**

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**

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**
Hearing Date:	**October 26, 2007**

Public Instruction

A rule is adopted creating **ch. PI 33**, relating to grants for nursing homes.

Finding of Emergency

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

The school nursing grant program under s. 115.28 (47), Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated $250,000 annually beginning in the 2007−08 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

Publication Date:	**November 24, 2007**
Effective Date:	**November 24, 2007**
Expiration Date:	**April 23, 2008**

Revenue (2)

1. Rules adopted amending **s. Tax 2.505**, relating to the computation of the apportionment fraction by multistate professional sports clubs.

Finding of Emergency

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

The emergency rule is to prescribe the method to be used for apportioning the apportionable income of interstate professional sports clubs.

It is necessary to promulgate this rule order to provide the method of apportionment to be used by interstate professional sports clubs.

Publication Date:	**October 12, 2007**
Effective Date:	**October 12, 2007**
Expiration Date:	**March 10, 2008**

2. A rule was adopted revising **s. Tax 8.63,** interpreting s. 125.54 (7), Stats., relating to liquor wholesale warehouse facilities.

Finding of Emergency

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

The emergency rule is to change the amount of floor space that a liquor wholesaler warehouse facility described in a wholesalers' permit is required to be from 4,000 to 1,000 square feet of floor space. It also creates a provision that allows the minimum square footage requirement to be waived when it is determined that a waiver is fair and equitable.

It is necessary to promulgate this rule order to remove the threat of revenue loss to bona fide liquor wholesalers as a result of having applications for issuance or renewal of permits denied solely because they do not meet the square footage requirement in the existing rule.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and Revisor of Statutes, as provided in s. 227.24, Stats.

Publication Date:	**October 29, 2007**
Effective Date:	**October 29, 2007**
Expiration Date:	**March 27, 2008**
Hearing Date:	**January 2, 2008**
	[See Notice this Register]

Transportation

Rule adopted creating **ch. Trans 178**, relating to the Unified Carrier Registration System.

Analysis

This chapter establishes in the Wisconsin Administrative Code the fees to be charged under the Unified Carrier Registration (UCR) system, and establishes a method for counting the number of vehicles so that an entity knows whether it is required to register under UCR and, if so, which fee bracket applies to the entity.

Exemption From Finding of Emergency

The Legislature, by Section 2927, as created by 2007 Wis. Act 20, provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date:	**December 19, 2007**
Effective Date:	**December 19, 2007**
Expiration Date:	**May 18, 2008**
Hearing Date:	**March 5, 2008**
	[See Notice this Register]

Scope Statements

Administration

Subject

The rules will amend ch. Adm 21 relating to advertising, bidding and award of construction contracts.

Policy Analysis

The Department of Administration proposes amending chapter Adm 21 to permit bidders and contractors to submit state construction project bids in an electronic format. Under the current rule, paper bid forms must be delivered in person or by mail service to the Department's office in Madison for a scheduled bid opening. This method is not equitable to all contractors throughout the State.

Based on customer input and current business practices relating to electronic data and information transmission, the Department has determined a strong need to offer electronic bidding for state construction projects. The proposed amendments will allow contractors throughout the State to have equal preparation time for submitting bids for state construction projects. The proposed rule amendment will also allow for distribution of construction bidding plans via an electronic media website.

This revision to the administrative code will allow for more efficient, competitive, current and up to date practices for design and construction of state facilities and the usage of those facilities.

Statutory Authority

Section 16.855 (15), Wis. Stats.

Entities Affected by the Rule

Prospective bidders responding to the Department's proposals for specific construction projects.

Comparison with Federal Regulations

Part 4 of Title 48 of the Code of Federal Regulations provides policy and procedures for the establishment and use of electronic commerce in federal acquisitions (48CFR14). The policy states that the federal government shall use electronic commerce whenever practicable or cost−effective. Agencies may exercise broad discretion in selecting the hardware and software that will be used in conducting electronic commerce. Subpart 14.202−8, of Title 48 of the Code of Federal Regulations allows contracting officers to authorize use of electronic commerce for submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use.

Estimate of Time Needed to Develop the Rule

Approximately 80 hours of department staff time will be needed to promulgate the rules.

Agriculture, Trade and Consumer Protection

Subject

The rules affect ch. ATCP 35, relating to the prevention of pollution from agricultural chemicals.

Objective of the Rule

Amend the existing rule to address new statutory language that establishes a financial assistance program for capital improvements designed to prevent pollution from agricultural chemicals. Amend the rules to delineate which businesses, projects and costs are eligible for financial assistance, how businesses would apply for the financial assistance, how applications would be evaluated, and how payments would be issued.

Policy Analysis

The Agricultural Chemical Cleanup Program rule (ATCP 35) makes reimbursement payments to responsible persons that have cleaned up agricultural chemical discharges. ATCP 35 has a maximum cap of $400,000 in eligible costs for any one discharge site that has been expanded to $500,000 under the recent statutory addition of s. 94.74, Stats. The increased cap is to allow for additional payments for costs of capital improvements designed to prevent pollution from agricultural chemicals. The department proposes to update this rule to address changes resulting from the new statutory language. The department may also renumber or reorganize ch. ATCP 35, as necessary.

There is no alternative. The statutes require the department to promulgate rules to implement this financial assistance program.

Statutory Authority

Sections 93.07, 94.73, and 94.74, Stats.

Entities Affected by the Rule

Businesses that handle or store fertilizers or pesticides.

Estimate of Time Needed to Develop the Rule

DATCP estimates that it will use approximately 0.5 FTE staff to develop this rule. This includes research, drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

Employee Trust Funds

Subject

The proposed rules affect ch. ETF 70, relating to the start date for phasing out a primary or alternate plan and to emergency withdrawals for beneficiaries.

Objective of the Rule

The proposed modifications concern adjusting the start date for phasing out a primary or alternate plan in order to reduce complications associated with the phase out, and also expands financial emergency hardship withdrawals to include hardships for a named beneficiary.

Policy Analysis

Fund Phase Out Process

Currently, s. ETF 70.08 (3) requires that phase one of the 12−month fund removal process begin on January 1 of the year following the Deferred Compensation Board's (Board) decision to remove a fund from the program. At the end of the phase out process, any remaining accounts left in the closed

fund are moved to the Board's default fund. By starting the process on January 1, the end of phase two of the process is supposed to occur on December 31 of that calendar year.

These modifications are prompted by recent experiences in closing out funds on December 31. It was evident that closing a fund at the end of a calendar year creates complications for all involved because the action occurs at a time when there are end−of−year valuations, reconciliation activities, reports being issued, and additional days that the financial markets are closed. All of these events occur at approximately the same time. By eliminating the January start date, and permitting the process to begin six months after the Board has made a fund removal decision, these problems will be eliminated. This change would create a rolling closure window outside of end−of−calendar year complications and still allow enough time to notify participants of the pending closure. For example, if the Board decides in May 2008 to close a fund, the process would begin on November 1, 2008, and conclude on April 30, 2009.

Emergency Hardship Withdrawal

Currently, s. ETF 70.10 allows a participant to make an emergency hardship withdrawal. The federal Pension Protection Act of 2006 expanded financial emergency hardship withdrawals to include hardships for a named beneficiary. However, the Wisconsin Deferred Compensation *Plan and Trust Document* and s. ETF 70.10 are inconsistent on this matter. The *Plan and Trust Document* already provides for this type of expansion in the law. Now, it is necessary to revise the administrative rule in order to allow this expansion.

Definition of Beneficiary

This modification adds "beneficiary" to the applicable subsections of s. ETF 70.10. The rule also adds the definition of "beneficiary to s. ETF 70.02, the definitions section of the existing rule. The definition of "beneficiary" is the same as that in s. 40.02 (8), Stats.

Statutory Authority

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

Entities Affected by the Rule

The proposed modification would affect the Board and the Department itself.

Comparison with Federal Regulations

This action will make the administrative code consistent with the Plan document and clarify any confusion about compliance with the Pension Protection Act of 2006.

Estimate of Time Needed to Develop the Rule

The Department estimates that state employees will spend 20 hours to develop this rule.

Public Instruction

Subject

The rules affect ch. PI 22, relating to the minority group pupil precollege scholarship program.

Objective of Rule

The objective of the rule is to change the scholarship eligibility criteria from being a minority pupil to being an economically disadvantaged pupil.

Policy Analysis

The rules relate to the criteria for the review and approval of applications for underrepresented minority group pupil precollege scholarships and must be modified accordingly. If the rules are not modified, ch. PI 22, will conflict with the statutory language under s. 115.43, Stats.

Statutory Authority

Sections 115.43 and 227.11 (2) (a), Stats.

Entities Affected by the Rule

Scholarships are awarded to eligible pupils and paid to the enrolling institution of higher education.

Comparison with Federal Regulations

Not applicable.

Estimate of Time Needed to Develop the Rule

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Public Instruction

Subject

The rule affects ch. PI 37, relating to grants for national teacher certification.

Policy Analysis

2007 Wisconsin Act 20, the biennial budget bill, modified s. 115.42, Stats., to allow teachers receiving master educator licenses through the state process to receive the same grants as those master educators receiving licenses through national certification and to provide an incentive to grant recipients to work in high poverty schools.

Specifically, Chapter PI 37, relating to Grants for National Teacher Certification, must be modified to: 1) allow teachers with a state master educator license to receive a grant under the program, and 2) allow teachers with a state master educator license or educators holding a national teacher certification to receive $5,000 (rather than $2,500) if he or she works in a school in which at least 60 percent of the pupils enrolled are eligible for free or reduced−price lunch.

Statutory Authority

Sections 115.42 and 227.11 (2) (a), Stats.

Entities Affected by the Rule

Teachers holding a Wisconsin master educator license or educators holding a national teaching certificate.

Comparison with Federal Regulations

Not applicable.

Estimate of Time Needed to Develop the Rule

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Public Instruction

Subject

The rules will create a new chapter relating to a competitive grant program for the development of programs in science, technology, engineering, and mathematics, and for the pupils in those subjects.

Policy Analysis

2007 Wisconsin Act 20, the biennial budget bill, created a new competitive grant program under s. 115.28 (46), Stats., appropriating $61,500 annually for school districts to: 1) develop innovative instructional program in science, technology, engineering and mathematics; 2) support pupils who are typically underrepresented in these subjects; and 3) increase the academic achievement of pupils in those subjects.

Statutory Authority

Sections 115.28 (46) and 227.11 (2) (a), Stats.

Entities Affected by the Rule

School districts.

Comparison with Federal Regulations

Not applicable.

Estimate of Time Needed to Develop the Rule

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Public Instruction

Subject

The rules will create a new chapter to create a grant program for school districts, other than Milwaukee public schools, to employ additional school nurses or contract for additional nursing services.

Policy Analysis

Grants must be awarded based on greatest need such as the ratio of pupils to nurses, rate of chronic health problems among pupils, and number of pupils from low−income families. Recipients may not supplant existing nursing staff or services and must submit a report to the department describing how the school district used the money and its effectiveness in providing additional nursing services to pupils who need such services.

Statutory Authority

Sections 115.28 (47) and 227.11 (2) (a), Stats.

Entities Affected by the Rule

School districts, with the exception of Milwaukee public schools.

Comparison with Federal Regulations

Not applicable.

Estimate of Time Needed to Develop the Rule

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Public Instruction

Subject

The rules will create a new chapter relating to four−year−old kindergarten grants.

Policy Analysis

Beginning in the 2008−09 school year, the Act appropriated $3,000,000 and allows school boards to apply to the department for a 2−year grant to implement a 4−year−old kindergarten program.

In the first school year of the grant, the school board may receive up to $3,000 for each 4−year−old kindergarten pupil; in the succeeding school year, $1,500 per 4−year−old pupil. If funds are insufficient, the department may prorate the payments.

The department is required to promulgate rules for the program and particularly to define ”community approaches to early education” as school boards that use this approach must receive preference in receiving funds.

Statutory Authority

Sections 115.445 and 227.11 (2) (a), Stats.

Entities Affected by the Rule

School districts.

Comparison with Federal Regulations

Not applicable.

Estimate of Time Needed to Develop the Rule

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Public Instruction

Subject

The rules will create a new chapter relating to grants for school district consolidation.

Policy Analysis

The department may award a one−time grant to any consortium (consisting of 2 or more school districts) in 2008−09 for school district consolidation studies. Grants awarded may not be more than $10,000 per consortium. No funds may be encumbered after June 30, 2009.

The consortium must submit a plan identifying the school districts engaged in the study, the issues the study will address, and how the grant funds will be expended. School districts are prohibited from being a member of more than one consortium. The department must give priority to applications that demonstrate prior attempts to address underlying issues associated with management and operation of the school districts’ programs. The grant recipient must submit the results of the study to the department.

Statutory Authority

Section 9137(3k) of 2007 Wis. Act 20.

Entities Affected by the Rule

School districts.

Comparison with Federal Regulations

Not applicable.

Estimate of Time Needed to Develop the Rule

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Transportation

Subject

The rule affects ch. Trans 178, relating to the unified carrier registration system.

Objective of the Rule

2007 Wis. Act 20, the biennial budget, authorizes Wisconsin DOT to participate in the multi−state Unified Carrier Registration (UCR) system, in accordance with provisions of federal law PL 109−59 and 49 CFR Part 367. Act 20 authorizes DOT to establish by rule in Wisconsin, consistent with federal law, an annual fee for a motor vehicle that is operated in Wisconsin and is subject to UCR registration. This rule making, creating ch. Trans 178, adopts and establishes the UCR fee structure that is established under federal law and regulations. Federal law dissolves the Single State Registration System, resulting in lost revenue unless this state participates in UCR.

Policy Analysis

Under federal law, the UCR Board sets the fees that apply to all states. Consistent with federal law, this rule making adopts those fees to apply to Wisconsin based carriers. Under federal law and regulation, UCR registration is required of all motor carriers, private motor carriers (not for−hire motor carriers, which are termed “motor private carriers” in federal law and regulations), freight forwarders, brokers, and leasing companies. Wisconsin collects fees from any such business that designates Wisconsin as its base state for this purpose.

Statutory Authority

Section 194.407 (1), Stats., as created by 2007 Wis. Act 20.

Entities Affected by the Rule

All motor carriers, private motor carriers (called “motor private carriers” in federal law and regulation), freight forwarders, brokers, and leasing companies whose base state for UCR purposes is Wisconsin are affected by this rule.

Comparison with Federal Regulations

This rule making is determined by, and consistent with, federal law and regulation. All terms and definitions used in this rule are the same as those in federal regulations. The fee schedule is set by the UCR Board and established in federal regulation by the USDOT. The fee schedule is the same for all affected carriers, regardless of their base state location.

Estimate of Time Needed to Develop the Rule

80 hours

Submittal of Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection

On November 28, 2007, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rule affects chs. ATCP 10, 12, and 17, relating to animal health and disease control.

Agency Procedure for Promulgation

Public hearings are scheduled for January 7, 8, and 10, 2008. The Animal Health Division is primarily responsible for this rule.

Contact Person

Melissa Mace
(608) 224−4883

Insurance

On November 30, 2007, the Office of the Commissioner of Insurance submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

These changes will affect s. Ins 2.19, Wis. Adm. Code, relating to sales of life insurance and annuities to the military and affecting small business.

Agency Procedure for Promulgation

A public hearing is scheduled for January 11, 2008.

Contact Person

A copy of the proposed rule may be obtained from the Web site at: http://oci.wi.gov/ocirules.htm or by contacting:

Inger Williams
Public Information and Communications
Office of the Commissioner of Insurance
(608) 264−8110

For additional information, please contact:

Fred Nepple
OCI Legal Unit
(608) 266−7726
e−mail: fred.nepple@wisconsin.gov

Revenue

On December 3, 2007 the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends s. Tax 8.63, relating to liquor wholesaler warehouse facilities.

Agency Procedure for Promulgation

A public hearing is scheduled for January 2, 2008.

Contact Person

If you have questions, please contact:

Dale Kleven
Income, Sales and Excise Tax Division
Telephone (608) 266−8253
E−mail dale.kleven@revenue.wi.gov

Rule−Making Notices

Notice of Proposed Rulemaking
Administration
[CR 07−078]

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1) and 16.957 (2) (c) 4., 5, and (4) (b), Stats., interpreting ss. 16.957 (1) to (4), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Administration will adopt the following rule as proposed in this notice, without a public hearing unless, within 30 days after publication of this notice, on **December 15, 2007,** the Department of Administration is petitioned for a public hearing by 25 natural persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Analysis Prepared by the Department of Administration

The Department of Administration proposes an order to revise Chapter Adm 43, relating to non−municipal electric utility low−income assistance fees.

Statutory Authority

Sections 16.004 (1), 16.957 (2) (c) 4. and 5., and (4) (b), Stats.

Statutes Interpreted

Section 16.957 (1) to (4), Stats.

Explanation of agency authority

Under s. 16.957 (2) (c) and (4) (b), Stats., the Department of Administration is required to promulgate rules for state low−income assistance programs.

Related statute or rule

None

Plain language analysis of proposed amendments

1999 Wisconsin Act 9 included major provisions relating to aspects of electric utility regulation, commonly referred to as "Reliability 2000." That legislation created a new statutory framework within which public benefit programs relating to low−income energy assistance and energy conservation and renewable energy were continued and expanded. Under ss. 16.957 (2) (c) and (4) (b), Stats., the Department of Administration was directed to promulgate rules setting fees to be collected by utilities from their customers, and establishing requirements and procedures related to those low−income and energy conservation programs. 2005 Wisconsin Act 141 revised many of the provisions of the earlier Act 9 and transferred responsibility and funding for energy conservation and renewable programs to non−municipal electric utilities under supervision of the Public Service Commission. However, low income assistance programs for non−municipal electric utility customers were not changed and continue to be funded as they have been and remain the responsibility of the Department of Administration. This rule revision makes the changes necessary to comply with 2005 Wisconsin Act 141. It also makes modifications to the procedure used to collect the low−income assistance fee, to simplify provisions that have proven cumbersome in practice, and to reflect realistic deadlines for various steps in the procedure.

In numerous locations throughout the entire chapter Adm 43, the term "public benefits" has been replaced with a more specific "low−income assistance".

Proposed revision to s. Adm 43.03 (1) modifies the definition of "amount invoiced" to clarify that the amount determined by the Department and invoiced to the non−municipal electric utilities is only an estimate of what the Department believes can be collected from utility customers under provisions of the statutes and this rule.

Proposed revision to s. Adm 43.04 (2) and (3) clarifies language and removes the requirement to use the named data sources to calculate the low−income assistance need, leaving the choice of data source to the discretion of the Department rather than specify a source that the department cannot assure will always be available. The removal of named data sources is also incorporated into ss. Adm 43.05 and 43.06.

Proposed revision to s. Adm 43.05(4) adds a requirement that the Department compare the calculated low−income assistance program funding amounts to be collected to the ability of each non−municipal electric utility to collect that amount in consideration of the statutory 3% cap on each customer's utility bill under ss. 16.957 (4) (c) 3. and (5) (am). If the calculated amount to be collected exceeds the amount collectable under the cap, the department may reduce the amount.

Proposed revision to s. Adm 43.06 changes the date, from March 1 to April 1, by which the department must determine the number of residential and non−residential customers used to allocate the amount to be collected. The same section also changes the date, from March 1 to May 15, by which the department must notify each non−municipal electric utility of the amount to be collected and the calculations used to determine that amount.

Proposed revision to s. Adm 43.07 removes the beginning date for the low income assistance fee collection because the date has already passed. It also changes the date, from April 1 to June 1, by which the non−municipal electric utilities must submit their plans to collect the amount determined for the low−income assistance program. Section Adm 43.07 (3) reflects the statutorily mandated change in the identification of the low−income assistance program on the utility customer bill. It is now known as "state low−income assistance fee" rather than a "non−taxable customer charge." Section Adm 43.07 (8) moves back, from May 15 to June 20, the date by which a non−municipal electric utility must file a modified collection plan if the original is disapproved by the department.

Section Adm 43.08 (3) is rewritten to simplify the reconciliation of actually collected fees with the amount originally estimated by the department. The new requirement applies only to residential collections. Variations are to be reflected by changes to the next year's amount collected. If an under−collection would result in substantial harm to the low−income programs the department may postpone the change until the following reconciliation period. The ability of a non−municipal electric utility to request of waiver of any under−collected fee is removed under s. Adm 43.08 (3) (c).

The requirement for an initial announcement of program availability is removed from s. Adm 43.11 because that announcement has already been made. Further, a provision is added to s. Adm 43.11 requiring the annual report of each non−municipal electric utility to be submitted in an electronic format specified by the department.

Comparison with federal regulations

No known existing or proposed federal regulations comparable to the proposed rules.

Comparison with rules in adjacent states

None of the four states neighboring Wisconsin has created a fee to fund low income energy assistance programs. Consequently, there are no rules comparable to this one which establishes a Wisconsin fee and procedures to calculate and collect it.

Analysis and supporting documents used to determine effect on small business

The proposed rules will have no effect on small businesses. The proposed amendments revise terminology to comply with 2005 Wisconsin Act 141.

Agency Contact Person

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101 E. Wilson Street
Madison, WI 53707−7864
608−266−2887
Donna.Sorenson@Wisconsin.Gov

Submission of Written Comments

Comments may be submitted to the agency contact person that is listed above and via the Wisconsin Administrative Rules Website at http://adminrules.wisconsin.gov by January 15, 2008.

Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., the rule amendments herein are not expected to negatively impact on small businesses. The rule will have no specific affect on small businesses. Small businesses will no longer be required to pay the efficiency portion of the "non−taxable fixed charge" currently included with utility bills. Rather, a comparable amount will now be included in the regular electricity bill. The State Low−Income Assistance Fee, which represents the low−income portion of the previous fee will appear on the electric bill after July 1, 2007, but the fee itself is imposed on all electric utility customers by s. 16.957(4), Stats. The rule does not establish any compliance or reporting requirements, or performance standards for small businesses.

Fiscal Effect

None.

Text of Rule

SECTION 1. Chapter Adm 43 (title), Adm 43.01 and 43.02 are amended to read:

NON−MUNICIPAL ELECTRIC UTILITY ~~PUBLIC BENEFITS~~ LOW INCOME ASSISTANCE FEE

Adm 43.01 Authority. Sections 16.004(1) and 16.957 (2)(c) and (4)(b) Stats., authorize the department to promulgate rules for non–municipal electric utility ~~public benefits~~ low−income assistance fees.

Adm 43.02 Purpose. The purposes of this chapter are to establish the ~~public benefits~~ low−income assistance fee to be collected by each non–municipal electric utility from its customers, and to provide procedures for collecting that fee.

SECTION 2. Adm 43.03 (1), (15) and (16) are renumbered Adm 40.03 (7m), (9g) and (9r), and amended to read:

Adm 43.03 Definitions. In this chapter:

(7m) "~~Amount~~ Estimated invoiced amounts" means that portion of the ~~public benefits~~ low−income assistance program funding level that is approved and ~~allocated~~ annually estimated by the department to be collectable by each non–municipal electric utility ~~to be collected~~ from its customers.

(9g) "~~Public benefits~~ Low−income assistance fee" means that ~~portion of the~~ amount ~~invoiced~~ determined by formula that a non−municipal electric utility allocates to and collects from a customer, and may include approved reasonable and prudent expenses.

(9r) "~~Public benefits~~ Low−income assistance program funding level" means the total funds to be collected by all electric providers annually under s. 16.957 (4) and (5), Stats.

SECTION 3. Adm 43.04 (2) and (3) are amended to read:

(2) Average annual income of low–income household data shall be estimated ~~by averaging~~ using the annual income of all households at or below 150% of the poverty threshold as shown by the most recent data available on or before March 1 ~~from the U.S. census bureau or the department's demographic services section~~.

(3) The number of low–income households shall be estimated by totaling the number of households at or below 150% of the poverty threshold as shown by the most recent data available on or before March 1 ~~from the U.S. census bureau or the department's demographic services section~~.

SECTION 4. Adm 43.05 is repealed and recreated to read:

Adm 43.05 Establishing the low−income assistance program funding level. (1) Annually on or before March 1 the department shall determine, in accordance with s. 16.957 (4) and (5), Stats., the low−income assistance program funding level for the following fiscal year.

(2) When establishing the low−income assistance program funding level, the department shall determine the number of residential and non–residential customers served by each electric provider based on the most recent data available on or before April 1.

(3) After establishing the low−income assistance program funding level, the department, using the formulas provided in s. 16.957 (4) (c) and (5), Stats., shall determine the portion of the low−income assistance program funding level that the non–municipal electric utilities shall collect each fiscal year. The department shall allocate 70% of this portion to be collected from residential customers and 30% to be collected from non–residential customers.

(4) After determining the residential and non−residential amounts to be collected, the department shall make a determination as to the ability to collect the full amounts as determined by the formula. The basis of the determination shall be multiplying the most recent gross sales of the non−municipal electric utilities by the cap of 3%. If the department determines that the result exceeds the non−municipal electric utility's ability to collect, the department may reduce the amount to be collected to a level the department believes can be collected.

SECTION 5. Adm 43.06 (1) and (2) (a) are amended to read:

Adm 43.06. Allocating the amount invoiced. (1) The department shall annually determine the number of residential and non−residential customers for each non−municipal electric utility based upon the most recent data

available on or before ~~March~~ April 1 ~~from the annual report of major utilities, licensees and others filed with the federal energy regulatory commission, or similar sources as determined by the department~~.

(2) (a) The department shall calculate the amount ~~invoiced~~ to be collected by determining a residential component and a non−residential component and adding those components together.

SECTION 6. Adm 43.06 (2) (d), (e) and (3) are amended to read:

(d) In cooperation with the non–municipal electric utilities, the department may adjust the estimated residential component to minimize any inequities resulting from the application of the restrictions in s. 16.957 (4) (c) 3., Stats., in order to produce a more uniform ~~public benefits~~ low−income assistance fee. The adjustment process may change the amount of the residential component allocated to a non–municipal electric utility, but shall not change the total residential component.

(e) In cooperation with the non–municipal electric utilities, the department may adjust the estimated non–residential component to minimize any inequities resulting from the application of the restrictions in s. 16.957 (4) (c) 3., Stats., in order to produce a more uniform ~~public benefits~~ low−income assistance fee. The adjustment process may change the amount of the non–residential component allocated to a non–municipal electric utility, but shall not change the total non–residential component.

(3) The department shall provide all calculations and related information in writing to each non–municipal electric utility in the form of a single annual ~~invoice~~ notification on or before ~~March 1~~ May 15. This documentation shall include an itemization of the residential and non–residential components based on the proportions prescribed in s. 16.957 (4) (b) 2., Stats.

SECTION 7. Adm 43.07, Adm 43.08 (title) and (1) are amended to read:

Adm 43.07 Collecting the ~~public benefits~~ low−income assistance fee. (1) ~~IMPLEMENTATION. Implementation of the public benefits fee collection plan shall begin in fiscal year 2001.~~ DEADLINES. The department may, at its discretion, modify any deadlines contained in this rule upon notification to the appropriate affected parties.

(2) COLLECTION PLAN. On or before ~~April~~ June 1, each individual non–municipal electric utility shall submit a collection plan and supporting documentation to the department for collecting the following fiscal year's amount invoiced and for recovering reasonable and prudent expenses. The ~~public benefits~~ low−income assistance fee collection plan shall be based on the calculations and related information provided by the department under s. Adm 43.06. Each non–municipal electric utility shall submit documentation that demonstrates its implementation plan and a budget of expenses necessary to comply with the requirements in s. Adm 43.09.

(3) CHARGES BILLED. Each customer bill that includes a ~~public benefits~~ low−income assistance fee shall identify the ~~public benefits~~ low−income assistance fee as a ~~"non−taxable fixed charge."~~ "state low−income assistance fee." All charges relating to the cost of supplying electric service to a residential or non–residential customer shall constitute the basis for calculating the limit on customer bill increases specified in s. 16.957 (4) (c) 3., Stats.

(4) EQUITABLE ALLOCATION. Each non–municipal electric utility shall submit documentation with its ~~public benefits~~ low−income assistance fee collection plan that demonstrates that the amounts of the ~~public benefits~~ low−income assistance fee it intends to bill its residential and non–residential customers equitably allocates the amount constituting the residential component among its residential customer classes, and the amount constituting the non–residential component among its non–residential customer classes. The amount of the ~~public benefits~~ low−income assistance fee may vary between customer classes, but shall be uniform within a customer class, except for variations due to the maximum bill increase restrictions in s. 16.957 (4) (c) 3., Stats.

(5) REQUEST FOR REBATE. A customer that pays one or more bills to a single non–municipal electric utility for meters located within that utility's service territory, may present documentation to and request relief from that non–municipal electric utility if the ~~public benefits~~ low−income assistance fees paid by the customer within that utility's service territory, when aggregated by the customer, exceed $750 in any month. The non–municipal electric utility shall rebate that portion of the ~~public benefits~~ low−income assistance fee that exceeds $750 in any month. Any amount so rebated to a customer under this provision shall be treated as an under–collection for purposes of s. Adm 43.08 (3).

(6) DEPARTMENT REVIEW. On or before ~~May 1~~ June 10, the department shall approve, modify, or deny each proposed collection plan and notify each non–municipal electric utility accordingly. The department shall provide reasons for a denial or modification in writing. A non–municipal electric utility may protest a denial or modification of its collection plan under the procedures set forth in s. Adm 43.12.

(7) PLAN IMPLEMENTATION. Each non–municipal electric utility shall implement an approved or modified ~~public benefits~~ low−income assistance fee collection plan at the start of the first monthly or periodic billing cycle of the following fiscal year. A modified collection plan shall be implemented even if a protest has been filed under s. Adm 43.12.

(8) DEPARTMENT DENIAL. (a) If the department denies a proposed ~~public benefits~~ low−income assistance fee collection plan, the non–municipal electric utility shall resubmit a collection plan to the department on or before ~~May 15~~ June 20 for the department's approval even if a protest has been filed under s. Adm 43.12. A resubmitted collection plan must address all comments and suggestions provided by the department in its denial.

(b) If the department denies a resubmitted collection plan, the non–municipal electric utility shall collaborate with the department to prepare a collection plan acceptable to the department. If the parties are unable to reach an agreement on or before June ~~1~~ 25, the department shall issue a collection plan for the non–municipal electric utility to implement the following fiscal year.

Adm 43.08 Payment and reconciliation of the ~~public benefits~~ low−income assistance fee. (1) PAYMENT DUE DATES. Each non–municipal electric utility shall make ~~equal monthly~~ payments to the department of the estimated invoiced amount ~~invoiced~~, no later than the 15th day of each month. ~~The first payment of each fiscal year is due on the 15th day of the second full month of the fiscal year.~~

SECTION 8. Adm 43.08 (3) (a) is repealed and recreated to read:

(3) RECONCILIATION OF COLLECTED FEES. (a) The department and each non−municipal electric utility shall at a minimum, once per year reconcile actual residential collections less total reasonable and prudent expenses approved by the department, with estimated invoiced amounts. All collections that exceeded the estimated

invoiced amounts will be collected through an adjustment to the next invoice. A non−municipal electric utility that collected less than the estimated invoiced amount will receive a credit to their next invoice in the amount of the under collection. In the event that overall collections are significantly under the total estimated invoiced amount the department may postpone crediting the following invoice until the next reconciliation period if the department determines substantial harm would be done to the operation of the low−income programs.

SECTION 9. Adm 43.08 (3) (b) is amended to read:

(b) Once in any fiscal year, a non–municipal electric utility may submit a written request to the department to adjust its ~~public benefits~~ low−income assistance fee collection plan. The request shall contain the current amount that has been over–collected or under–collected and the amount that is forecasted to be over–collected or under–collected for the remainder of the fiscal year, the reasons for the differences and the non–municipal electric utility's proposed adjustments to its approved ~~public benefits~~ low−income assistance fee collection plan. The department shall indicate its approval or disapproval of the proposed adjustments in writing within 30 days of receipt of the request. The non–municipal electric utility may implement the collection plan adjustment immediately upon department approval. If the department does not approve a collection plan adjustment, the affected non–municipal electric utility may protest under procedures set forth in s. Adm 43.12.

SECTION 10. Adm 43.08 (1)(c) is repealed.

SECTION 11. Adm 43.08 (1) (d) is renumbered Adm 43.08 (1) (c) and as renumbered, is amended to read:

(c) The department shall adjust a non–municipal electric utility's ~~public benefits~~ low−income assistance fee collection plan effective on the beginning of the fiscal year for which the collection plan was submitted, upon a successful appeal filed under s. Adm 43.12.

SECTION 12. Adm 43.08 (4) is amended to read:

(4) ACCOUNTS RECEIVABLE AND UNCOLLECTIBLE ACCOUNTS. A non–municipal electric utility's reconciliation statement may include an estimation of the uncollected amount of its preceding year's ~~public benefits~~ low−income assistance fee that is recorded as an accounts receivable. A non–municipal electric utility's reconciliation statement may also include an estimated amount of its ~~public benefits~~ low−income assistance fee that was recorded in a previous fiscal year as accounts receivable and has been subsequently recognized as uncollectible revenues. The cost of uncollectible revenues may be included in a request for reasonable and prudent expenses in s. Adm 43.09.

SECTION 13. Adm 43.09 (1) is amended to read:

Adm 43.09 Requesting approval for reasonable and prudent expenses. (1) A non–municipal electric utility may request recovery of reasonable and prudent expenses incurred in the development and implementation of its ~~public benefits~~ low−income assistance fee collection plan. The request shall be submitted in writing to the department for approval on or before February 15. The request shall include an accounting of actual costs for the previous calendar year. The non–municipal electric utility may include approved expenses in its ~~public benefits~~ low−income assistance fee collection plan for the following fiscal year.

SECTION 14. Adm 43.09 (5) and Adm 43.10 (1) are amended to read:

(5) A non–municipal electric utility shall document all reasonable and prudent expenses it seeks to include in the ~~public benefits~~ low−income assistance fee.

Adm 43.10 Voluntary contributions. (1) ANNUAL OPPORTUNITY. At least annually, each electric utility shall provide its residential and non–residential customers an opportunity to make voluntary contributions to the trust fund established under s. 25.96, Stats., to fund their choice of programs established in ss. 16.957 (2) (a) ~~and (b) 1.~~, Stats. An electric utility shall provide the opportunity for its residential and non–residential customers to make such voluntary contributions by including an insert and return envelope in the mailing containing the annual public benefits report required by s. 16.957 (4) (am), Stats. Each electric utility may provide opportunities for its residential and non–residential customers to make voluntary contributions to an energy assistance fund administered by the electric utility at other times and by other methods.

SECTION 15. Adm 43.11 (1) is repealed.

SECTION 16. Adm 43.11 (2), (3) and (4) are renumbered Adm 43.11 (1), (2) and (3), and as renumbered, are amended to read:

Adm 43.11 Reports and annual statements. (1) FINANCIAL REPORT. No later than 60 days after the end of each fiscal year, each non–municipal electric utility shall submit to the department a complete financial report of its ~~public benefits~~ low−income assistance fees. The report shall include a complete explanation of the collection reconciliation and the balance as of the end of the fiscal year, an assessment of the implementation of its ~~public benefits~~ low−income assistance fee collection plan, the amount collected by customer class, and any other matter the department determines necessary.

(2) DEPARTMENT STATEMENT. The department shall provide each non–municipal electric utility with an annual statement within 120 days of the end of each fiscal year identifying the total amount of the annual amount invoiced to each non–municipal electric utility, and describing the programs for which the ~~public benefits~~ low−income assistance fees were used.

(3) NON–MUNICIPAL ELECTRIC UTILITY STATEMENT. Each non–municipal electric utility shall distribute the department's annual statement to each of its residential and non–residential customers. No non–municipal electric utility may be required to provide an individual customer the specific amount of ~~public benefits~~ low−income assistance fees assessed to that customer when it distributes the department's annual statement.

SECTION 17. Adm 43.11 (4) is created to read:

(4) REPORTS IN ELECTRONIC FORMAT. Each non−municipal electric utility shall submit the report in sub. (1), using an electronic format specified by the department.

SECTION 18. Adm 43.12 (1) and (2) are amended to read:

Adm 43.12 Appeals. (1) RIGHT TO PROTEST. A non–municipal electric utility that disputes the department's denial or modification of its proposed ~~public benefits~~ low−income assistance fee collection plan, the denial of an expense request, or the denial of a reconciliation statement may protest to the department. The non–municipal electric utility shall serve the protest in writing on the administrator of the department's division of energy ~~and public benefits~~ within 15 days of the receipt of the department's denial or modification of the proposed ~~public benefits~~ low−income assistance fee collection plan under s. Adm 43.07, the reconciliation statement under s. Adm 43.08, or the expense claim under s. Adm 43.09.

(2) AUTHORITY TO RESOLVE PROTESTS. The administrator of the department's division of energy ~~and public benefits~~ shall have the authority to settle and resolve any protest brought under this subsection. If the protest is not resolved by mutual agreement, the division administrator shall promptly issue a written decision to the protesting utility.

Notice of Proposed Rulemaking
Administration
[CR 07−079]

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1) and 16.957 (2) (c) 2, Stats., interpreting ss. 16.957 (1) to (4), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Administration will adopt the following rule as proposed in this notice, without a public hearing unless, within 30 days after publication of this notice, on **December 15, 2007**, the Department of Administration is petitioned for a public hearing by 25 natural persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Analysis Prepared by the Department of Administration

The Department of Administration proposes an order to amend Chapter Adm 45, relating to low income assistance public benefits.

Statutory authority

Sections 16.004 (1), 16.957 (2) (c), and 227.11 Stats.

Statutes Interpreted

16.957 (1) to (4), Stats.

Explanation of agency authority

Under s. 16.957 (2) (c), Stats., the Department of Administration is required to promulgate rules for state low−income assistance programs.

Related statute or rule

None

Plain language analysis

1999 Wisconsin Act 9 included major provisions relating to aspects of electric utility regulation, commonly referred to as "Reliability 2000." That legislation created a new statutory framework within which public benefit programs relating to low−income energy assistance and energy conservation and renewable energy were continued and expanded. 2005 Wisconsin Act 141 revised many of the provisions of the earlier Act 9 and transferred responsibility and funding for energy conservation and renewable programs to non−municipal electric utilities under supervision of the Public Service Commission. However, low income assistance programs for non−municipal electric utility customers were not changed and continue to be funded as they have been and remain the responsibility of the Department of Administration. The proposed rule revisions remove "public benefits" terminology to clarify that the rule applies only to the low−income assistance program in compliance with 2005 Wisconsin Act 141

The proposed amendments also change the term "secured correctional facility" to "juvenile correctional facility" as amended in 2005 Wisconsin Act 344 (s. 938.02(10p), Stats.).

Lastly, the amendment removes the requirement that the department consult with the Council on Utility Public Benefits prior to announcing new or continued low−income assistance programs. This requirement is redundant to that already stated in s. 16.957(2) intro., Stats.

Comparison with federal regulations

No known existing or proposed federal regulations comparable to the proposed rules.

Comparison with rules in adjacent states

Each of the four states adjacent to Wisconsin operates programs that provide assistance to low−income households that face difficulty dealing with utility bills. In general, these programs implement federally mandated and funded programs. While the programs differ substantially between states in the details of their structure, each has promulgated rules governing the programs.

- Title 89 of the Illinois Administrative Code, Chapter 1, Subchapter b, Part 109 addresses the low−income home energy assistance program. Included in this rule are subparts B & C which govern the energy assistance or bill payment program and the weatherization program respectively.
- Michigan Administrative Rule 400.7001 – 7049 governs the "State Emergency Relief Program" which includes provisions for assistance with utility charges.
- Iowa Administrative Code [427], Chapter 5 establishes the eligibility, method of administration, and hearing and appeals provision of the Weatherization Assistance Program. IAC [427] Chapter 10 establishes similar provisions for the Low Income Energy Assistance Program. Additionally, Iowa has created the Affordable Heating Program under IAC 427 Chapter 11 to provide energy assistance in addition to the federal low income energy assistance program for households whose incomes falls below 110% of the federal poverty income guidelines rather than the 150% limit for the Low Income Assistance Program.
- Minnesota Rule 3300.0800 – 3300.1900 establishes the procedures for operation of the Minnesota weatherization program.

Summary of factual data and analytical methodologies

The department relied on the following sources to draft the proposed rules or to determine the impact on small businesses:

- 2005 Wisconsin Act 141 transferred the energy assistance and renewable energy responsibilities to the Public Service Commission. The proposed rule amendments remove references to the "public benefits" programs to comply with 2005 Wisconsin Act 141. There are no new reporting requirements or operational standards resulting from the proposed rule amendments.

Analysis and supporting documents used to determine effect on small business

The proposed rules will have no effect on small businesses. The proposed amendments revise terminology to comply with recent statutory changes.

Agency Contact Person

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Submission of Written Comments

Comments may be submitted to the agency contact person that is listed above and via the Wisconsin Administrative

Rules website at http://adminrules.wisconsin.gov by January 15, 2008.

Initial Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the rule amendments herein are not expected to negatively impact on small businesses.

Fiscal Effect

None.

Text of Rule

SECTION 1. Adm 45 (title), 45.01 and 45.02 are amended to read:

LOW−INCOME ASSISTANCE ~~PUBLIC BENEFITS~~

Adm 45.01 Authority. Sections 16.004 (1) and 16.957 (2) (c) 2., Stats., authorize the department to promulgate rules for low−income assistance ~~public benefits~~ programs.

Adm 45.02 Purpose. The purpose of this chapter is to establish general eligibility and application requirements and procedures for assistance under a low−income ~~public benefits~~ assistance program established under s. 16.957 (2) (a), Stats.

SECTION 2. Adm 45.03(2) and (3) are amended to read:

45.03 (2) "Benefit" means an award of financial or other assistance by the department or a contractor designated by the department to an eligible household under a ~~public benefits~~ low−income assistance program.

45.03 (3) "Contractor" means a community action agency described in s. 46.30 (2) (a) 1., Stats., a nonstock, nonprofit corporation organized under ch. 181, Stats., or a local unit of government under contract with the department that provides services under a ~~public benefits~~ low−income assistance program.

SECTION 3. Adm 45.03 (6) is amended to read:

45.03 (6) "Low income ~~public benefits~~ assistance program" means a program established in accordance with s. 16.957 (2) (a), Stats.

SECTION 4. Adm 45.03 (9) is amended to read:

45.03 (9) "~~Secured~~ Juvenile correctional facility" has the meaning specified in s. 938.02~~(15m)~~ (10p), Stats.

SECTION 5. Adm 45.04 (1) and (2) are amended to read:

Adm 45.04 Eligibility requirements. (1) A person or household eligible to receive fuel bill payment assistance, early identification crisis assistance, weatherization or conservation services, and similar low−income assistance from federally funded programs specified in ss. 16.26 and 16.27, Stats., shall be eligible for assistance through a low−income ~~public benefits~~ assistance program.

45.04 (2) The following are not eligible for assistance under a low−income ~~public benefits~~ assistance program:

SECTION 6. Adm 45.04 (2) (b) is amended to read:

45.04 (2) (b) A person who is imprisoned in a state prison or a person placed at a ~~secure~~ juvenile correctional facility or a secured child caring institution.

SECTION 7. Adm 45.05 and 45.06 (1) are amended to read:

Adm 45.05 Program elements. ~~In consultation with the council on utility public benefits, the~~ The department shall annually announce new or continued programs offered by the department that will provide low−income assistance. The department shall also provide specific information on the application process, where to obtain an application, the eligibility criteria, and where to file the application for each program created or continued under s. 16.957 (2) (a), Stats.

Adm 45.06 Application requirements. (1) A person or household may apply for a benefit from a low−income ~~public benefits~~ assistance program by completing an application on forms prescribed by the department. At a minimum an application shall contain the names and ages of all household members, residence address, actual or estimated fuel use, documentation of income, the names of home energy providers and the social security number of the head−of−household.

Notice of Proposed Rulemaking
Administration
[CR 07−080]

NOTICE IS HEREBY GIVEN that under 2005 Wisconsin Act 141, the Department of Administration proposes to repeal Chapter Adm 44 of the Wisconsin Administrative Code relating to energy conservation and efficiency and renewable resource programs. Because the repeal of Ch. Adm 44 is in conformity with 2005 Wisconsin Act 141, the Department, under s. 227.16 (2) (b), will not hold a public hearing concerning this matter.

Analysis Prepared by the Department of Administration

Plain language analysis

2005 Wisconsin Act 141 amended s. 16.957, Stats., to exclude energy conservation and efficiency and renewable resource programs from Department duties effective July 1, 2007. The proposed elimination of Chapter Adm 44 complies with 2005 Wisconsin Act 141 that transferred all the responsibilities governed by the rule to the Public Service Commission effective July 1, 2007. Separately, the Public Service Commission has developed a rule to fulfill its new responsibilities. The proposed rule repeal brings an existing rule into conformity with a statute that has been changed to no longer require the Department's involvement in the energy conservation and efficiency and renewal resource programs. Therefore, pursuant to s. 227.16(2)(b), Stats., the Department will not hold public hearings regarding this rule.

Comparison with federal regulations

No known existing or proposed federal regulations comparable to the proposed rules.

Comparison with rules in adjacent states

Each of the four states adjacent to Wisconsin operates energy efficiency and renewable energy programs, albeit with substantial variation in strategies and methods.

- The Minnesota Department of Commerce operates the "conservation improvement program" under Minnesota Rule, Chapter 7690. This rule specifies the "procedures to be followed by public utilities in submitting, and by the department [of Commerce] in analyzing and selecting, proposals for conservation improvement programs and to provide for the participation of other interested persons in developing conservation improvement programs." Minnesota Rule, Chapter 7635 establishes the requirements for "Major regulated utilities to offer their residential utility customers services related to the promotion of energy conservation." This is similar to the Wisconsin system, effective July 2007, that requires utilities to develop and deliver energy efficiency and renewable energy programs subject to oversight by a state agency.
- The Iowa Utilities Board, under the Iowa Department of Commerce, oversees energy efficiency and renewable programs under several administrative rules. The Iowa Administrative Code (IAC) [199] Chapter 28 – Iowa

Supplemental Energy Conservation Plan covers a voluntary plan for the "small− to medium−sized energy suppliers." IAC [199] Chapter 35 provides implementation governance for gas and electric utilities required by statute to be rate−regulated and to provide the (Iowa Utilities) board the necessary information to review each utilities assessment of potential, to develop specific capacity and energy savings performance standards for each utility and to evaluate the appropriateness of each utility's energy efficiency plan. IAC [199] Chapter 36 requires that "Each non−rate regulated gas and electric utility shall file energy efficiency plans…" Lastly, IAC [565] Chapter 18 establishes the State Energy Program under the Environmental Services Division of the Department of Natural Resources.

- The Michigan Low Income and Energy Efficiency Fund is overseen by the Michigan Public Service Commission in the Department of Labor and Economic Growth, generally through Commission orders. Funding is through the utility rate base. Michigan Rule 460.2401 – 2414 provides standards to be followed by public utilities that choose to deliver residential conservation programs. Unlike Wisconsin, Michigan does not mandate that the state's utilities provide energy efficiency programs.
- The Illinois Department of Commerce and Economic Development operates energy efficiency and renewable energy programs in that state. There are no rules governing the efficiency programs. Illinois Admin. Code Title 86 Revenue, Part 517 provides rules by which the Department of Revenue collects a Renewable Energy Resources and Coal Technology Development Assistance Charge. Half of this charge is used to fund a Renewable Energy Resources Trust Fund administered by the Department of Commerce and Economic Opportunity. Illinois Administrative Code Title 32, Energy, Chapter 1, Part 130 covers the Illinois Renewable Fuels Development Program.

Agency Contact Person

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Submission of Written Comments

Comments may be submitted to the agency contact person listed above and via the Wisconsin Administrative Rules Website at http://adminrules.wisconsin.gov by January 15, 2008.

Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., the repeal of this rule is not expected to negatively impact on small businesses. A similar set of energy conservation and efficiency and renewable resource programs will be maintained by non−municipal electric utilities with oversight by the Public Service Commission, with no break in service to customers or small businesses.

Fiscal Effect

None

Text of Rule

SECTION 1. Chapter Adm 44 is repealed.

Notice of Hearings
Agriculture, Trade and Consumer Protection
[CR 07−107]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed amendment to chapters ATCP 10, 12, and 17, Wis. Adm. Code, relating to animal health and disease control.

Hearing Information

Monday, January 7, 2008
6:00 p.m. to 7:00 p.m.
Fox Valley Technical College
1825 N. Bluemound Drive, Room C140
Appleton, WI 54912

Tuesday, January 8, 2008
6:00 p.m. to 7:00 p.m.
Dept. of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
1st Floor − Rm. 106 (Boardroom)
Madison, Wisconsin 53718

Thursday January 10, 2008
6:00 p.m. to 7:00 p.m.
Dept. of Natural Resources West Central Region Headquarters
1300 W. Clairemont Avenue – Room 158
Eau Claire, WI 54701

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by December 19, 2007, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708−8911, telephone (608) 224−4883. Alternatively, you may contact the DATCP TDD at (608) 224−5058. Handicap access is available at the hearings.

Written Comments

DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Friday, January 25 for additional written comments. Comments may be sent to the Division of Animal Health at the address below, by email to Melissa.mace@wisconsin.gov or online at:
https://apps4.dhfs.state.wi.us/admrules/public/Home

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

Copy of Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224−4883 or emailing Melissa.mace@wisconsin.gov. Copies will also be available at the hearings. To view the proposed rule online, go to:
https://apps4.dhfs.state.wi.us/admrules/public/Home

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

This rule modifies Wisconsin animal health and disease control rules. Among other things, this rule:

- Establishes new rules related to viral hemorrhagic septicemia (VHS) in fish, and simplifies registration of fish farms. DATCP has adopted temporary emergency VHS rules, which this rule would make "permanent."
- Modifies current rules related to farm−raised deer, including rules related to herd registration, disease control, imports, movement and condemnation. Changes are consistent with proposed federal rules.
- Modifies current rules related to cattle, including rules related to voluntary Johne's disease testing and classification, tuberculosis import testing, and imports of cattle originating from Mexico.
- Modifies current rules related to poultry imports and enrollment in the national poultry improvement program.
- Modifies current rules related to animal markets, dealers and truckers.
- Modifies current rules related to Wisconsin's livestock premises registration program. This rule makes it easier to register, and extends the current annual registration period to 3 years.
- Clarifies current disease indemnity appraisal procedures.
- Makes minor drafting changes to update, clarify and correct current rules.

Statutory Authority

Sections 93.07 (1) and (10), 95.18, 95.19 (3), 95.197 (2), 95.20, 95.22(2), 95.32 (5), 95.38 (3), 95.45 (4) (c) and (5), 95.51 (7), 95.55 (6), 95.57 (1), 95.60 (3), (4) (c) and (4s), 95.65 (2), 95.68 (8), 95.69 (8) and 95.71 (8), Stats.

Statutes interpreted

Sections 93.07 (10), 95.18, 95.19, 95.197, 95.20, 95.22, 95.23, 95.32, 95.36, 95.38, 95.45, 95.51, 95.55, 95.57, 95.60, 95.65, 95.68, 95.69 and 95.71, Stats.

Explanation of agency authority

DATCP has broad general authority to adopt rules interpreting statutes under its jurisdiction (*see* s. 93.07(1), Stats.). DATCP is specifically authorized to adopt rules to protect the health of animals in this state, and to prevent, control and eradicate communicable diseases among animals.

Rule contents

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's animal health and disease control program. This rule modifies current DATCP rules under chs. ATCP 10 (animal diseases and movement), ATCP 12 (animal markets, dealers and truckers) and ATCP 17 (livestock premises registration).

Fish

Fish Farm Registration

This rule allows a fish farm operator to register 2 or more fish farms under a single annual registration certificate (under current rules, a separate registration certificate is required for each fish farm). A single registration certificate may cover both type 1 and type 2 fish farms. The registration certificate must identify each fish farm location, and must indicate whether that location is registered as a type 1 or type 2 fish farm. As under current rules, the operator must pay annual fees based on the number and types of fish farms registered (this rule does not change current fees).

This rule clarifies that fish may be moved between type 2 fish farms registered to the same operator, or from a type 2 to a type 1 fish farm registered by the same operator, without a fish health certificate. Under this rule, as under current rules, the fish farm operator must keep complete records of the fish movement.

VHS Test Reports

Under this rule, a veterinarian who tests fish in this state for viral hemorrhagic septicemia (VHS) must report the test result to DATCP, regardless of whether the test result is positive or negative.

VHS Testing Requirements

Current DATCP rules require health certificates for all of the following:

- Fish and fish eggs (*including* bait) imported into the state.
- Fish and fish eggs stocked into Wisconsin public waters.
- Fish and fish eggs moved between Wisconsin fish farms.

Under current rules, *import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for any of the following:

- Fish or fish eggs stocked into Wisconsin public waters from *Wisconsin* sources.
- Bait fish or fish eggs originating from *Wisconsin* sources.
- Fish or fish eggs moved between *Wisconsin* fish farms.
- Non−salmonids imported from states (such as Minnesota) where VHS has not yet been found.

This rule expands current VHS testing requirements. Under this rule, a fish health certificate and VHS testing are required for all of the following fish and fish eggs if they are of a *known VHS−susceptible species* identified by the United States department of agriculture (USDA) and were either (1) collected from a wild source in any state within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source in any state within the preceding 12 months:

- Fish or fish eggs stocked into Wisconsin public waters.
- Fish or fish eggs moved between Wisconsin fish farms.
- Fish or fish eggs distributed by a bait dealer for use as bait. The bait fish testing requirement will initially apply to emerald shiners (a known VHS−susceptible species), but will *not* initially apply to other major bait species such as fathead minnows, white suckers and golden shiners (which are not yet known to be VHS−susceptible). However, it could eventually apply to other species if USDA finds that those species are also VHS−susceptible. A retail bait dealer is not required to conduct duplicate tests on fish previously tested by a wholesale bait dealer.

This rule also prohibits any person from selling bait fish *of any kind* if the seller has reason to know that the bait is affected with VHS or another reportable disease.

Operators Moving Fish Between Their Own Fish Farms

This rule clarifies that VHS and other routine disease testing requirements do not apply when operators (including DNR) are moving fish or fish eggs between their own registered fish farms. However, current DATCP rules continue to prohibit such movement if the operator knows or has reason to know that the fish or fish eggs are affected with a reportable disease such as VHS. DATCP may also issue quarantine and other disease control orders to individual fish farm operators, as necessary.

Registrant Responsibility

This rule clarifies that a person who registers a fish farm is responsible for ensuring that fish farm operations comply with DATCP rules. However, this rule does not relieve other persons of liability for rule violations that they commit.

Farm−Raised Deer

Chronic Wasting Disease Test Reports

Under this rule, a veterinarian who tests a farm−raised deer in this state for chronic wasting disease must report the test result to DATCP, regardless of whether the test result is positive or negative.

Herd Registration; General

Under current rules, no person may keep farm−raised deer at any location in this state unless DATCP has issued a current annual registration certificate authorizing that person to keep farm−raised deer at that location. An annual registration certificate currently expires on December 31 of each year. This rule changes the annual expiration date to March 15, beginning with the first registration year beginning after the effective date of this rule.

One Registered Herd Kept at 2 or More Locations

This rule clarifies that a person may keep farm−raised deer at 2 or more locations identified in a single herd registration certificate, subject to the following conditions:

- All of the herd locations must be actively enrolled in Wisconsin's chronic wasting disease status program.
- The registrant may move farm−raised deer between locations identified in the herd registration certificate *without* a certificate of veterinary inspection if all of the following apply:
  - Those farm−raised deer are identified with official individual identification.
  - The registrant keeps a detailed record of the movement.
- All farm−raised deer covered by the registration certificate will be treated as members of a single herd, for purposes of disease control and movement.

Two or More Registered Herds Kept at One Location

Under this rule, separately−registered farm−raised deer herds may be kept at the *same location* (even if they are owned by different persons) subject to the following conditions:

- If the herds are "medically separated," each herd is considered a separate herd for purposes of disease control, movement, and enrollment in Wisconsin's chronic wasting disease status program. Farm−raised deer moved between any of the medically separated herds must be accompanied by a certificate of veterinary inspection, and registrants must keep a detailed record of each movement.
- If the herds are *not* medically separated:
  - All of the farm−raised deer covered by the herd registrations are collectively treated as a single herd for purposes of disease control and movement, regardless of location or ownership, and regardless of whether they are part of the same registered herd.
  - Farm−raised deer may be moved between any of the herd locations identified on any of the herd registration certificates, without a certificate of veterinary inspection, provided that they are identified with official individual identification. Registrants must keep detailed records of the movements.
  - All of the herds, including all locations covered by the herd registration certificates, must be actively enrolled in Wisconsin's chronic wasting disease status program.
- Herds are "medically separated," for purposes of this rule, if all of the following apply:
  - They are separated by a double fence meeting Department of Natural Resources (DNR) standards or, in the case of farm−raised deer other than white−tailed deer, by a functionally equivalent barrier approved by DATCP.
  - Bio−security procedures effectively prevent disease transmission between the herds.
  - The department inspects each shared herd location, and finds that the herds are "medically separated." There is an inspection fee of $150 (no change from current rules).

Chronic Wasting Disease Tests

Under current rules, a farm−raised deer keeper must have a chronic wasting disease test performed on every farm−raised deer at least *16 months old* that dies in captivity, or is killed or sent to slaughter (the test sample must be sent to an approved laboratory within 10 days after it is collected). Under this rule, testing is required for deer at least *8 months old* that meet the same criteria. Under this rule, a test sample must be collected within 10 days after the animal dies, or is killed or slaughtered (or within 10 days after the death is first discovered). Under this rule as under the current rules, the test sample must be sent to an approved laboratory within 10 days after it is collected.

Condemnation of Farm−Raised Deer

This rule clarifies current rules related to DATCP condemnation of diseased or suspect farm−raised deer. Under this rule, a condemnation order may do all of the following:

- Specify a reasonable deadline for destruction of the condemned animals.
- Direct appropriate disease testing and disposition of the carcasses.
- Require the herd owner or custodian to enter into a "premises plan" as a condition to the payment of state indemnities. The "premises plan" may require the herd owner or custodian to clean and disinfect the herd premises, limit future cervid movement to and from the premises, or comply with other requirements that are reasonably designed to prevent the spread of disease. A "premises plan" may include a restrictive covenant, such as a fence maintenance requirement, that is binding on subsequent property owners for the duration of the agreement.

Under current rules, the owner of condemned farm−raised deer may apply for state indemnity payments. Under this rule, an application for indemnity payments must include proof of compliance with DATCP's condemnation order.

Chronic Wasting Disease Herd Status Program; Annual Census

Under current rules, no person may move farm−raised deer from a herd in this state unless the herd is enrolled in Wisconsin's chronic wasting disease herd status program. Enrollees must, among other things, submit an annual herd census to DATCP. Among other things, an annual herd census must report the number, species and sex of animals that have left the herd since the last annual census, and how those animals left the herd. Under this rule, an annual herd census must also include:

- A report of apparent escapes, including approximate escape dates and circumstances, and steps taken to prevent recurring escapes.
- An explanation and accounting for overall changes in herd population since the last annual census.
- Census verification by a Wisconsin certified veterinarian if required by the department.

White−tailed Deer Herd; Fence Certificate

Under current law, fences for farm−raised white−tailed deer herds must be approved by DNR, and must comply with DNR rules. Under this rule, a person applying for a DATCP registration certificate to keep white−tailed deer must include, with the application, a copy of a valid DNR fence certificate for each registered location.

Hunting Preserves

Under current law, a person operating a farm−raised deer hunting preserve must hold a hunting preserve registration certificate from DATCP (a certificate is valid for 10 years). Current rules spell out hunting preserve registration standards and application requirements. Under this rule, an application must also include all of the following:

- An estimate of the farm−raised deer population on the hunting preserve premises, by species, age and sex.
- The identification numbers of any farm−raised deer on the hunting preserve that bear identification numbers.

Under this rule, all non−natural additions to a hunting preserve must have 2 forms of official individual identification, one visible and one implanted.

Disease−Free Certification of Farm−Raised Deer

Under current rules, DATCP may certify a herd of farm−raised deer as brucellosis−free or tuberculosis−free, or both, based on herd test results provided by the herd owner. Participation is voluntary, but disease−free herd certification facilitates the sale and movement of farm−raised deer. Herd certification is generally governed by federal rules (uniform methods and rules) that DATCP has incorporated by reference in its rules.

Under current federal rules, tuberculosis−free herd certification is good for 3 years, while brucellosis−free herd certification is good for only 2 years. USDA proposes to harmonize the certification terms, but has not yet adopted the necessary rule changes. USDA has authorized DATCP to harmonize the terms by state rule.

This rule extends brucellosis−free herd certification from 2 years to 3 years (a herd owner may request a shorter term), consistent with tuberculosis−free herd certification. That will allow herd owners to conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer.

This rule also clarifies that DATCP may transfer a herd certification to new herd owner, or grant equivalent certification status to a new herd created from an existing certified herd, if the herd meets certification standards and the owner applies for certification within 90 days.

Tuberculosis in Farm−Raised Deer

Under current rules, a farm−raised deer must be slaughtered within 15 days if it is found to be a tuberculosis reactor, except that DATCP may extend the slaughter deadline by up to 15 days. Under this rule, DATCP may extend the slaughter deadline by up to 30 days.

Importing Farm−Raised Deer

Farm−raised deer imported to this state must meet standards specified in current rules. Among other things, the imported animal must meet one of several alternative requirements related to tuberculosis status. This rule modifies current import standards, based on current federal standards for interstate movement. This rule eliminates current requirements for post−import testing.

Moving Farm−Raised Deer Within Wisconsin

Farm−raised deer moved between separately registered herds in this state must meet standards specified in current rules. Among other things, the farm−raised deer must meet one of several alternative requirements related to tuberculosis status. Under one alternative, a farm−raised deer may qualify for movement if it tests negative on 2 tuberculosis tests, where the second test is performed within 360 days prior to movement. Under this rule, the second test must be conducted within 90 days prior to movement.

Under this rule, a farm−raised deer may not be moved between separately registered herds in this state unless it has been enrolled in Wisconsin's chronic wasting disease status program for at least 5 years. If the source herd is located in a DNR wild deer chronic wasting disease eradication zone, it must have been enclosed by a DATCP−approved double fence for at least 5 years.

Cattle

Johne's Disease Testing and Herd Classification

DATCP currently administers a voluntary herd testing and classification program related to Johne's disease in cattle. Herd testing and classification is conducted according to federal standards adopted by the United States department of agriculture (USDA). This rule incorporates the latest version (2006) of the USDA standards.

Under current rules, Johne's disease test samples must be collected by an accredited veterinarian, by an individual working under direct supervision of an accredited veterinarian who submits the sample for testing, or by an authorized DATCP or USDA employee or agent. Under this rule, a milk sample for Johne's disease testing may also be collected by a Dairy Herd Improvement Association (DHIA) authorized technician.

Imported Cattle and Bison; TB Test Exemption

Current rules exempt imported bovine animals (cattle and bison) from the requirement of a pre−import tuberculosis test if the animals originate from a state that USDA has classified as "TB−free" if that state accepts Wisconsin animals without a TB test. Under this rule, the exemption does not apply if the state of origin has a confirmed TB−positive herd, until that herd is depopulated and all epidemiologically linked herds have tested negative for TB.

Cattle and Bison from Mexico

Under this rule, no person may import an "M−branded" bovine animal (cattle or bison) to this state, except directly to slaughter. "M−branded" animals are animals branded with the letter "M" to signify that they have been imported from Mexico.

Poultry

National Poultry Improvement Plan Enrollment

Under current rules, a poultry flock owner may enroll the flock in the national poultry improvement program (DATCP administers the program in this state). Enrollment facilitates the sale and movement of poultry. Under this rule, a flock may not be enrolled in the program unless the flock premises have been registered under Wisconsin's livestock premises registration program (the premises ID number must be included on the enrollment application).

Poultry Imports

Under current rules, poultry may not be imported to Wisconsin unless they are accompanied by a valid certificate of veterinary inspection that certifies *all* of the following:

- They originate from flocks enrolled in the national poultry improvement plan.

- They originate from flocks classified as "U.S. pullorum−typhoid clean" and, in the case of turkeys and turkey eggs, "Mycoplasma gallisepticum clean" under the national poultry improvement plan.

This rule changes current poultry import requirements. Under this rule, poultry may not be imported to Wisconsin unless they are accompanied by a valid certificate of veterinary inspection that certifies *at least one* of the following:

- They originate from flocks enrolled in the national poultry improvement plan.
- They originate from flocks classified as "U.S. pullorum−typhoid clean" and, in the case of turkeys and turkey eggs, "Mycoplasma gallisepticum clean" under the national poultry improvement plan or under an equivalent plan approved by DATCP.
- All test eligible birds have tested negative for pullorum, fowl typhoid and, in the case of turkeys, Mycoplasma gallisepticum within 90 days prior to import. Tested birds must bear official individual identification, and there may be no change of ownership between the test sampling date and the import date.

Llamas and Alpacas

Under this rule, a llama or alpaca imported to Wisconsin must be accompanied by a certificate of veterinary inspection that includes the official individual identification of the llama or alpaca.

Animal Markets

General

This rule does all of the following:

- Eliminates the current requirement for animal market operators to pass a test before being initially licensed by DATCP.
- Requires animal market operators to transport and handle animals in a safe and humane manner.
- Clarifies animal transport vehicle registration requirements.
- Requires animal market operators to record the official individual identification of goats that bear official individual identification.
- Requires animal market operators to record the livestock premises code, if any, of each premises from which the operator receives or to which the operator ships livestock.

Federally Approved Livestock Import Markets

Under current rules, certain livestock imported to a federally−approved livestock import market in this state are exempt from Wisconsin import requirements, provided that they meet those requirements before *leaving* the market. Under this rule, before the animals leave the market, the market operator must also disclose the animals' state of origin to the animal purchaser.

Animal Dealers

This rule does all of the following:

- Eliminates the current requirement for animal dealers to pass a test before being initially licensed by DATCP.
- Requires animal dealers to transport and handle animals in a safe and humane manner.
- Clarifies animal transport vehicle registration requirements.
- Requires animal dealers to record the official individual identification of goats.
- Requires animal dealers to record the livestock premises code, if any, of each premises from which the dealer receives or to which the dealer ships livestock.

Animal Truckers

This rule does all of the following:

- Eliminates the current requirement for animal truckers to pass a test before being initially licensed by DATCP.
- Eliminates the current license exemption for animal truckers that haul animals for other persons fewer than 6 times per license year.
- Requires animal truckers to transport and handle animals in a safe and humane manner.
- Clarifies animal transport vehicle registration requirements.
- Requires animal truckers to record the livestock premises code, if any, of each premises from which the trucker receives or to which the trucker ships livestock.

Slaughter Establishments

Under current rules, no person may remove livestock from a slaughter establishment after the animal has been weighed and purchased by the slaughter establishment. Under this rule, no person may remove livestock after they have been off−loaded at the slaughter establishment.

Disease Indemnities

Under current law, DATCP may condemn and order the destruction of animals to prevent the spread of serious diseases. In some cases, the owner of the diseased animals may be eligible for state indemnity payments. Under this rule, if the owner of a diseased animal is eligible for state indemnities, and if the animal is of a type not frequently sold at public auction, DATCP must appoint a knowledgeable independent appraiser to determine the value of the animal. The appraiser must determine appraised value based on the animal's size, species, sex, and grade or quality, and by relevant information related to prevailing market prices for animals of that size, species, sex, and grade or quality.

Prohibited Practices

This rule prohibits any person from selling, moving or disposing of an animal before the result of a disease test of that animal is known, if that disease test is required by law prior to the sale, movement or disposition.

Livestock Premises Registration

Registration Renewal Period

Under current law, a person keeping livestock in this state must register each location where those livestock are kept. "Livestock" includes bovine animals, equine animals, goats, poultry, sheep, swine other than wild hogs, farm−raised deer, captive game birds, camelids, ratites and fish. Under current DATCP rules, a person must renew a livestock premises registration every year. This rule extends the current renewal period. Under this rule, a person will only be required to renew once every 3 years.

Who May Register

Under current rules, if *person A* feeds and cares for livestock owned by *person B*, on premises owned by *person C*, any of those persons may register the premises (the others need not). However, if the premises are part of an operation (such a dairy farm) that DATCP licenses under other applicable law, current rules provide that *only the license holder* may register the premises. This rule eliminates that restriction, so that any eligible person (including, but not limited to, the license holder) may register the premises. This rule retains a current rule provision which allows an applicant

for an initial license (such as an initial dairy farm license) to register the livestock premises as part of that initial license application.

DATCP May Register Premises if Operator Does Not

This rule authorizes DATCP to register livestock premises, or renew a premises registration, on behalf of an operator that fails to do so. For example, DATCP could register livestock premises on behalf of operators who may have religious objections to registering themselves. Before DATCP registers any premises on behalf of any person, DATCP must notify that person of the person's duty to register and of DATCP's intent to register on that person's behalf. Registration by DATCP does not relieve the person of any penalties or liability that may apply as a result of the person's failure to register the livestock premises.

Other Changes

This rule makes a number of other minor drafting changes designed to update, clarify and correct current rules.

Comparison with federal regulations

DATCP administers animal disease control programs in cooperation with USDA. USDA has well−established control programs for historically important diseases such as tuberculosis and brucellosis. Federal rules for these programs spell out standards for disease testing, disease control, international and interstate movement of animals, certifying the disease status of states, and certifying the disease status of individual herds.

USDA operates national veterinary diagnostic laboratories, and coordinates multi−state responses to major disease epidemics. USDA exercises disease control authority, including quarantine and condemnation authority, and provides funding for indemnity payments to certain owners of condemned animals. USDA operates state and regional offices, and coordinates field operations with states.

USDA has less well−developed programs for new or localized diseases, or emerging animal−based industries. States often take a lead role in developing programs to address new animal health issues and disease threats (farm−raised deer and fish diseases, for example), particularly if those issues or threats have a more local or regional focus. Wisconsin's program related to fish and farm−raised deer are perhaps the leading programs in the nation, and have provided models for proposed federal programs.

USDA may provide grant funding, regulatory incentives, or other assistance in support of state programs and regulation. For example, USDA provides funding for voluntary Johne's disease testing and herd management, based on federal program standards.

States have independent authority to regulate animal health and movement, including imports from other states. However, states strive for reasonable consistency, based on standards spelled out in federal regulations. Where well−established federal standards and procedures exist, state disease control programs typically incorporate those federal standards. However, states may independently address new and emerging disease issues, especially if those issues have a state or regional focus and are not a priority for USDA.

Comparison with rules in adjacent states

Surrounding state animal health programs are broadly comparable to those in Wisconsin, but vary in a variety of ways. Differences in disease regulations and control programs may reflect differences in animal populations, animal−based industries, and disease threats in the different states. Programs for historically important diseases, such as tuberculosis and brucellosis, tend to be fairly similar between states and are based on well−established federal standards. Programs for newer forms of agriculture, such as farm−raised deer and aquaculture, tend to be more variable.

Aquaculture

All of the surrounding states regulate aquaculture, to some degree:

- Minnesota requires fish import permits, and licenses fish farms and fish dealers. Health certification is required for fish imports, but not for fish farms. Bait imports are prohibited.
- Iowa requires fish import permits, and licenses fish farms. Health certification is required for fish imports, but not for fish farms.
- Illinois licenses fish farms and fish dealers. An import permit and health certification is required for certain fish imports (salmonids). There is limited regulation of fish transport vehicles.
- Michigan licenses fish farms. Health certification is required for fish imports.

Johne's Disease

All of the surrounding states (Illinois, Michigan, Iowa and Minnesota) have adopted a voluntary Johne's disease testing and herd management program, based on the federal program. Wisconsin has a similar program, which it is updating under this rule.

Fiscal Impact

This rule will not have a significant state or local fiscal impact, except that the fish health provisions of this rule will have the following impact on DNR and DATCP.

Impact on DNR

This rule will have a fiscal impact on DNR fish hatchery and stocking operations. Under this rule, all VHS−susceptible fish and fish eggs (including VHS−susceptible bait species) must be tested for VHS before being stocked to Wisconsin public waters if they were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source within the preceding 12 months.

DNR annually registers approximately 100 fish farms with DATCP. Thirteen of those fish farms are state−owned fish hatcheries. The remainder are registered by DNR but owned by private DNR "cooperators" (as registrant, DNR assumes legal responsibility for compliance with fish health rules). DATCP estimates that DNR will need to conduct VHS tests on a combined total of approximately 120 lots of fish per year (including fish at state hatcheries and "cooperator" fish farms registered by DNR).

Assuming an average test cost of $500 per lot, the total cost to DNR would be approximately $60,000 per year. However, DNR has already implemented a number of internal controls and VHS testing protocols, so the added cost of this rule will be less than $60,000. DNR costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

Impact on DATCP

DATCP will incur added costs to administer and enforce the fish health testing requirements under this rule. DATCP will need *at least* 2.0 FTE staff to review and process a large volume of fish health certificates in a timely manner; to train fish health inspectors to collect samples for VHS testing; to provide compliance information and respond to industry inquiries; to conduct inspections and monitor compliance; to

conduct investigations of possible law violations; and to initiate enforcement actions if necessary.

The 2.0 FTE staff will have a combined total cost of at least $120,000 per year, including salary, fringe benefits and support costs. DATCP will attempt to absorb these costs in the short term by shifting staff from other important disease control responsibilities, but DATCP will not be able to do so indefinitely without putting other livestock sectors at unacceptable risk. DATCP will seek federal grant funds to cover some of the costs, but federal funding is not guaranteed.

Business Impact

Aquaculture Industry

This rule creates new regulations to control viral hemorrhagic septicemia (VHS) in fish, and simplifies registration of fish farms. This rule will affect fish farm operators and bait dealers. This rule will also affect the Wisconsin Department of Natural Resources (DNR). The effect on DNR is described in the fiscal estimate for this rule.

This rule will benefit the aquaculture industry by helping to control the spread of VHS, a very serious disease of fish. This rule will also benefit fish farm operators, by simplifying current fish farm registration requirements (operators will be able to register multiple fish farms on a single registration form). However, this rule may add costs or limit operations for some fish farmers and bait dealers, as described below.

Fish Farm Operators

DATCP estimates that this rule will affect 30−40 private fish farms, not counting DNR "cooperator" fish farms registered by DNR. Many of the affected fish farms are "small businesses," and many of them will be substantially affected by this rule. VHS testing requirements may force some fish farm operators to curtail all or part of their operations. However, some fish farms already conduct VHS tests in order to meet federal requirements for interstate movement of fish.

Fish farm operators may incur added testing requirements under this rule if they keep VHS−susceptible fish or fish eggs that were either (1) collected from any wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs (of *any* species) collected from any wild source within the preceding 12 months. Operators must test those VHS−susceptible fish or fish eggs before they distribute them for bait, for stocking to Wisconsin public waters, or for delivery to other fish farms (other than those registered by the same operator).

A veterinarian or other qualified fish health inspector must certify that the fish or fish eggs are VHS−free, based on tests using approved methods. VHS tests must be conducted on a statistically representative sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately $500 (actual costs vary depending on test method, number of fish in the lot, number of fish species in the lot, etc.). A single fish farm might need to test from 1−30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and purposes for which the fish are kept and distributed.

DATCP estimates that approximately 30−40 private fish farm operators will need to conduct VHS tests, and that they will conduct those tests on a combined total of approximately 40 lots of fish per year. Assuming an average cost of $500 per test per lot, the *combined total cost to all affected private fish farm operators* will be approximately $20,000 per year.

However, some of those affected fish farmers are already performing VHS tests in order to meet federal requirements for shipping fish in interstate commerce, so the net impact of this rule may be less than $20,000. Fish farm costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

Bait Dealers

Wisconsin bait dealers are currently licensed by DNR. This rule will affect licensed bait dealers in 2 ways:

- If bait dealers buy VHS−susceptible bait species that originate from wild sources, their purchase costs may reflect the seller's added cost of VHS testing under this rule.
- If bait dealers collect VHS−susceptible bait species from wild sources, they will need to conduct VHS tests before reselling or distributing the bait. They will also need to withhold the bait from distribution for at least 4 weeks pending the completion of VHS tests. That will add costs, and may not be practically feasible for affected bait dealers.

This rule applies only to bait species that are known to be susceptible to VHS. Of the major bait species in Wisconsin (fathead minnow, white sucker, golden shiner and emerald shiner), only one species (emerald shiner) is currently known to be susceptible to VHS. Emerald shiners are obtained exclusively by wild harvesting, while other major bait species can be hatched and raised on farms. At this time, DATCP estimates that emerald shiners represent less than 10% of the overall bait market in Wisconsin (the market for wild−harvested emerald shiners has already diminished as a result of federal VHS testing requirements for emerald shiners moved in interstate commerce).

DATCP estimates that approximately 25 Wisconsin bait dealers are currently harvesting emerald shiners from the wild. DATCP estimates that each of those bait dealers would need to test an average of 6 lots of wild−harvested emerald shiners each year, before distributing the emerald shiners for sale. Assuming an average cost of $500 per test lot, the average annual cost for an individual bait dealer would be about $3,000 per year, and the combined total cost to all 25 of those bait dealers would be about $75,000 per year. That figure does *not* include added costs to hold the emerald shiners for 4 weeks while testing is completed. It is extremely difficult to hold emerald shiners for extended periods, so it may not even be possible for most bait dealers to hold them for the required 4 weeks.

The difficulty of holding emerald shiners for 4 weeks, combined with the added cost of testing emerald shiners, may drive many bait dealers out of the business of harvesting wild emerald shiners for sale as bait. However, those bait dealers may still be able to harvest and sell other types of bait that are not affected by this rule.

Bait dealers that are not currently harvesting emerald shiners will not be substantially affected by this rule unless USDA finds that additional bait species are susceptible to VHS. If USDA finds that other major bait species are susceptible to VHS, this rule could have a more dramatic impact on bait dealers. The impact will depend on the species that are affected.

Farm−Raised Deer Keepers

This rule changes current rules related to farm−raised deer. This rule makes all of the following changes:

- Requires veterinarians who perform chronic wasting disease (CWD) tests to report test results to DATCP.
- Changes the annual expiration date for farm−raised deer herd registrations, from December 31 to March 31.

- Clarifies that a person may keep farm−raised deer at 2 or more locations identified in a single herd registration certificate, subject to specified conditions.
- Clarifies that separately−registered farm−raised deer herds may be kept at the *same location* (even if they are owned by different persons), subject to specified conditions.
- Modifies current CWD testing requirements. Under current rules, a test must be performed on every farm−raised deer at least *16 months old* that dies in captivity, or is killed or sent to slaughter (the test sample must be sent to an approved laboratory within 10 days after it is collected). Under this rule, testing is required for deer at least *8 months old* that meet the same criteria. Under this rule, a test sample must be collected within 10 days after the animal dies, or is killed or slaughtered (or within 10 days after the death is first discovered). Under this rule as under the current rules, the test sample must be sent to an approved laboratory within 10 days after it is collected.
- Clarifies current rules related to DATCP condemnation of diseased or suspect farm−raised deer. Under this rule, a condemnation order may specify a reasonable compliance deadline, may direct appropriate testing and disposition of carcasses, and may require the herd owner or custodian to enter into a "premises plan" as a condition to the payment of state indemnities.
- Clarifies annual herd census requirements under Wisconsin's chronic wasting disease herd status program. Under this rule, an annual herd census must report apparent escapes, and must explain and account for changes in herd population since the last census.
- Clarifies that a person applying to register a herd of white−tailed deer with DATCP must include, with the registration application, a copy of a valid DNR fence certificate (currently required by law) for each registered location.
- Clarifies that a person applying for a 10−year hunting preserve certificate from DATCP must include, in the application, an estimate of the farm−raised deer population on the hunting preserve premises (by species, age and sex). The application must also include the identification numbers of any farm−raised deer on the hunting preserve that bear identification numbers. Under this rule, all non−natural additions to a hunting preserve must have 2 forms of official individual identification, one visible and one implanted.
- Extends the term of a brucellosis−free herd certification, from 2 years to 3 years, so that it is consistent with the term of a tuberculosis−free herd certification. That will allow herd owners to conduct simultaneous tests for both diseases.
- Allows DATCP to extend the 15−day slaughter deadline for tuberculosis reactors by up to 30 days (current rules allow only a 15−day extension).
- Modifies current tuberculosis regulations for imports of farm−raised deer, to make them consistent with federal standards for interstate movement. This rule also eliminates current requirements for post−import testing.
- Clarifies current rules related to movement of farm−raised deer between separately registered herds in this state.

Most of the changes in this rule are designed to clarify current rules, or to make current rules consistent with federal rules. The rule changes will have minimal impact on most farm−raised deer keepers, and will reduce costs and facilitate deer farm operations in many cases. Clear and effective rules will help prevent and control chronic wasting disease and other diseases, for the benefit of the entire farm−raised deer industry.

This rule will require farm−raised deer keepers to perform chronic wasting disease tests on farm−raised deer that die between the ages of 8 months and 16 months (current rules only require testing of animals that die at age 16 months or older). The reduction in test age may require some farm−raised deer keepers to test a slightly larger number of farm−raised deer. The United States Department of Agriculture (USDA) currently pays laboratory testing costs, but farm−raised deer keepers must pay at least part of the cost to have test samples collected by a veterinarian. The sample collection cost ranges from $15/head to $140/head depending on the availability of a veterinarian. In recent years, USDA has paid the first $50 of this cost (future funding is uncertain).

This rule requires additional (implanted) ID tags for farm−raised deer entering hunting preserves, to facilitate disease traceback. The cost of the additional tag is estimated at less than $5 per farm−raised deer. In recent years, USDA has paid for implanted ID tags (future funding is uncertain).

Cattle and Goat Producers

Under current rules, Johne's disease test samples must normally be collected by accredited veterinarians. This rule allows Dairy Herd Improvement Technicians to collect milk samples that are used as Johne's disease test samples. That will make it easier, and less costly, for dairy farmers to participate in the Johne's disease herd testing and management program.

Current rules exempt imported bovine animals (cattle and bison) from the requirement of a pre−import tuberculosis test if the animals originate from a state that USDA has classified as "TB−free" if that state accepts Wisconsin animals without a TB test. Under this rule, the exemption does not apply if the state of origin has a confirmed TB−positive herd, until that herd is depopulated and all epidemiologically linked herds have tested negative for TB. This rule also prohibits imports of cattle originating from Mexico, except directly to slaughter. This rule will help prevent imports of diseased cattle, and provide important protection for Wisconsin's livestock industry. It will not have significant adverse effects on the livestock industry.

Poultry Producers

Under current rules, a poultry flock owner may voluntarily enroll in the National Poultry Improvement Plan (enrollment facilitates the sale and movement of poultry). Under this rule, a flock owner may not enroll unless the owner has registered flock premises under Wisconsin's livestock premises identification program. This will not have a significant impact on flock owners, because registration is already required by law.

Current rules regulate poultry imports to Wisconsin. This rule modifies poultry import standards, to provide more flexible options for poultry importers. This rule will have no adverse impact on poultry importers.

Animal Markets, Dealers and Truckers

This rule does all of the following:

- Eliminates the current requirement for animal market operators, animal dealers and animal truckers to pass a test before being initially licensed by DATCP.
- Requires animal market operators, animal dealers and animal truckers to transport and handle animals in a safe and humane manner.
- Clarifies animal transport vehicle registration requirements.

- Requires animal market operators, animal dealers and animal truckers to record the official individual identification of goats that bear official individual identification.
- Requires animal market operators, animal dealers and animal truckers to record the livestock premises code, if any, of each premises from which the operator receives or to which the operator ships livestock.
- Requires operators of federally−approved livestock import markets to disclose, to livestock recipients, the state of origin of livestock leaving the import market.

This rule will simplify licensing of animal market operators, dealers and truckers, by eliminating current testing requirements. This rule will require some animal market operators, dealers and truckers to make minor changes in recordkeeping and operating procedures. Recordkeeping changes will improve disease control and traceback capability, for the benefit of the entire livestock industry. This rule will not have any significant adverse effect on animal market operators, dealers or truckers.

Persons Keeping Livestock; Premises Registration

Under current law, a person who keeps livestock at a location in this state is required to register that location with DATCP. Under current rules, the person must renew the registration annually. If the person holds another license from the department, the person must register as part of the license application process.

This rule extends the renewal period from one year to 3 years. Under this rule, a license holder may register as part of the license application process but is not required to do so (the person may register separately). Under this rule, DATCP may register known livestock premises if the livestock operator fails to do so (because the operator has religious objections, for example). These changes will make it easier and more convenient for livestock operators to comply with premises registration requirements. This rule will have no adverse impact on the livestock industry.

Slaughter Establishments

This rule clarifies the current prohibition against removing live animals from slaughter establishments. This rule will not have any adverse effect on slaughter establishments.

Disease Indemnities

This rule clarifies the procedures that DATCP will use to determine the appraised value of animals condemned for disease control purposes, in order to determine the amount of state indemnity payments. This rule will not have any significant adverse effect on livestock operators, and will clarify indemnity procedures.

Small Business Analysis

Overall, this rule improves disease control and prevention for the benefit of the entire livestock and aquaculture industry. In many cases, this rule will actually improve flexibility and reduce costs for individual businesses, including small businesses. Overall, this rule has few adverse impacts on small business.

This rule may have some adverse effects on some small businesses (especially bait dealers that harvest emerald shiners from wild sources for sale as bait). If USDA finds that additional fish or bait fish species are susceptible to VHS, this rule may have a more dramatic impact on fish farm operators or bait dealers, or both. Many of the affected entities will be small businesses.

This rule is needed to protect the health of Wisconsin livestock industries, including the aquaculture and farm−raised deer industries. It is also needed to protect the health of wild animals, including fish. Effective disease control is important for all the people of the state, and for the affected livestock industries.

Although this rule may have some adverse effects on some small livestock businesses, those effects are generally minimal and are outweighed by the need to prevent and control the spread of serious diseases that could destroy entire industries. DATCP has not exempted small businesses, because the risk of disease spread is unrelated to business size.

Overall, this rule will benefit Wisconsin livestock industries by improving control of serious diseases. This rule will also increase flexibility and reduce costs for many individual businesses. This rule may have some adverse effects on some individual businesses, those effects are generally limited and are outweighed by the need to prevent and control the spread of serious diseases that could destroy entire industries.

Notice of Hearing
Commissioner of Insurance
[CR 07−108]

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of proposed rules affecting section Ins 2.19, Wis. Adm. Code, relating to sales of life insurance and annuities to the military and affecting small business.

Hearing Information

Date: **January 11, 2008**

Time: 10:00 a.m., or as soon thereafter as the matter may be reached

Place: OCI, Room 223
125 South Webster St. − 2nd Floor
Madison, WI

Submission of Written Comments

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

Written comments can be mailed to:

Fred Nepple
Legal Unit − OCI Rule Comment for Rule Ins 2.19
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707−7873

Written comments can be hand delivered to:

Fred Nepple
Legal Unit − OCI Rule Comment for Rule Ins 2.19
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703−3474

Comments can be emailed to:

Fred Nepple
fred.nepple@wisconsin.gov

Web site: http://oci.wi.gov/ocirules.htm

Comments submitted through the Wis. Adm. Rule Web site at http://adminrules. wisconsin.gov will be considered.

Copy of Rule

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at **http://oci.wi.gov/ocirules.htm** or by contacting Inger Williams, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov, (608) 264−8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707−7873.

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

Statutes interpreted

Sections 600.01, 628.34, 628.347, Stats.

Statutory authority

Sections 600.01 (2), 601.41 (3), 601.42, 628.34, 628.347, Stats.

Explanation of agency authority

This proposed rule defines practices relating to the sale of life insurance and annuities to the military that are misleading and unfair trade practices. Accordingly it is authorized by s. 628.34, Stats, which prohibits and permits OCI to define unfair trade practices.

Related statutes or rules

Section 628.34, Stats., prohibits misrepresentation or unfair practices in the business of insurance. In addition ss. Ins 2.14 to 2.17, Wis. Adm. Code, govern specific practices relating to the sales of annuities and life insurance.

Plain language analysis and summary of the proposed rule

Congress on September 29, 2006, enacted the *Military Personnel Financial Services Protection Act*, Pub. L. No. 109−290 (2006) (the "*Federal Act*"). Congress found it imperative that members of the United States Armed Forces be shielded from "abusive and misleading sales practices" and protected from certain life insurance products that are "improperly marketed as investment products, providing minimal death benefits in exchange for excessive premiums that are front−loaded in the first few years, making them entirely inappropriate for most military personnel."

The Federal Act asks that the "States collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices while on a military installation." The Federal Act calls on the National Association of Insurance Commissioner ("NAIC") to, in coordination with the Secretary, create standards for products specifically designed to meet the particular needs of members of the Armed Forces, regardless of the sales location.

The NAIC developed the Military Sales Practices Model Regulation ("Model") to address the Federal Act request. The Model specifically prohibits certain acts and practices as false, misleading, deceptive or unfair under Wisconsin's unfair trade practices statute (s. 628.34, Stats.) Many of the provisions incorporate Department of Defense ("DoD") solicitation rules. For example by tracking DoD regulations the Model prohibits a practice of soliciting the sales of life insurance in barracks, day rooms and other restricted areas.

The Model also addresses Congressional concerns regarding suitability and product standards. In this regard, the Model prohibits recommending the purchase of any life insurance product which includes a "side fund" to junior enlisted service members in pay grades E− 4 and below, unless the insurer has reasonable grounds for believing that the life insurance portion of the product, standing alone, is suitable.

The proposed rule conforms to the recommended NAIC Model.

Comparison with federal regulations

See Plain language analysis. The Model tracks or incorporates relevant DoD solicitation regulations in DoD Instruction 1344.07: *Personal Commercial Solicitation on DoD Installations*, and Army Regulation 210−7: *Commercial Solicitation on Army Installations*. These regulations identify prohibited sales practices directed at active duty service members.

Comparison of rules in adjacent states

Illinois: The Illinois Insurance Department is currently in the process of promulgating the Model.

Iowa: The Iowa Insurance Department is currently in the process of promulgating the Model.

Michigan: The Michigan Insurance Department is currently in the process of promulgating the Model.

Minnesota: The Minnesota Insurance Department is currently in the process of promulgating the Model.

Summary of factual data and analytical methodologies

The proposed rule is based on a review of complaints, enforcement investigations conducted by other state insurance departments and the recommendations and analysis prepared and shared by the NAIC.

Analysis and supporting documentation used to determine rule's effect on small businesses

The proposed rule solely requires appropriate sales practices. As such it will not impose any additional costs relating to those practices. While use of appropriate life and annuity sales practices with active duty military is an important topic, such sales are not a material portion of insurance business in this state. This is confirmed by the few complaints OCI has received on the topic and also by DoD information that shows only a small number of active duty military personnel resident in Wisconsin.

Summary of effect on small business

This rule will have little or no effect on small businesses. It will not require bookkeeping procedures or professional skills beyond those currently required.

Agency Contact Person

Inger Williams, OCI Services Section, at:

Phone:	(608) 264−8110
Email:	inger.williams@wisconsin.gov
Address:	125 South Webster St – 2nd Floor Madison WI 53703−3474
Mail:	PO Box 7873, Madison, WI 53707−7873

Initial Regulatory Flexibility Analysis

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

Types of small businesses affected

Insurance agents and brokers and small insurers.

Description of reporting and bookkeeping procedures required

None beyond those currently required.

Description of professional skills required

None beyond those currently required.

Small business regulatory coordinator

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

Fiscal Estimate

This rule change will have no significant effect on the private sector, state, or local government.

Notice of Hearing
Revenue

NOTICE IS HEREBY GIVEN that pursuant to s. 125.54 (7) (d), Stats., and interpreting s. 125.54 (7), Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the amendment of rules relating to liquor wholesaler warehouse facilities.

Hearing Information

The hearing will be held at 9:00 A.M. on Wednesday, **January 2, 2008**, in the Events Room (1st floor) of the State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than January 9, 2008, and will be given the same consideration as testimony presented at the hearing.

Contact Person

Small Businesses:

Julie Raes
Department of Revenue
Mail Stop 6−73
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708−8933

Telephone (608) 267−9892
E−mail julie.raes@revenue.wi.gov

Others:

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

Telephone (608) 266−8253
E−mail dale.kleven@revenue.wi.gov

Analysis Prepared by the Department of Revenue

Statute interpreted

Section 125.54 (7), Stats.

Statutory authority

Section 125.54 (7) (d), Stats.

Explanation of agency authority

Section 125.54 (7) (d), Stats., provides that the department shall promulgate rules to administer and enforce the requirements of s. 125.54 (7), Stats. It also provides that the department shall establish by rule minimum requirements for warehouse facilities on premises described in permits issued under s. 125.54, Stats.

Related statute or rule

Section 25.54 (7), Stats.

Plain language analysis

This proposed rule order changes the amount of floor space that a liquor wholesaler warehouse facility described in a wholesalers' permit is required to be from 4,000 to 1,000 square feet of floor space. It also creates a provision that allows the minimum square footage requirement to be waived when it is determined that a waiver is fair and equitable.

In addition to the changes to the requirements concerning liquor wholesaler warehouse facilities and liquor wholesalers, the rule creates a provision requiring the department to prepare and maintain a list of all liquor wholesale permittees and shall post the names from this list on the Internet. The Internet site shall list the name of each permittee and the total square feet of floor space of the premises described in the permit. The department shall update the Internet site on a quarterly basis.

Comparison with federal regulations

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

Comparison with rules in adjacent states

The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies

Tax 8.63 was created to satisfy the requirements of s. 125.54 (7), Stats., which, in part, provides that the department establish minimum requirements for warehouse facilities on premises described in wholesalers' permits. One of the requirements established by Tax 8.63 is that a liquor warehouse facility be a minimum of 4,000 square feet of floor space.

Since the provisions of Tax 8.63 became effective, the department has become aware of bona fide liquor wholesalers whose facilities are less than the required 4,000 feet of floor space. In response, the department has created this proposed rule order to lessen the required amount of floor space and provide an exception so that a bona fide liquor wholesaler will not have an application for issuance or renewal of a permit denied solely because it does not meet the square footage requirement.

Analysis and supporting documents used to determine effect on small business

As the proposed changes to Tax 8.63 ease the requirements for warehouse facilities, the department has concluded that this proposed rule order does not have a significant effect on small business.

Anticipated Costs Incurred by Private Sector

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

Initial Regulatory Flexibility Analysis

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

Text of Rule

SECTION 1. Tax 8.63 (1) is amended to read:

(1) MINIMUM REQUIREMENTS FOR WAREHOUSE FACILITIES. The premises described in a permit issued under s. 125.54, Stats., shall be a minimum of ~~4,000~~ 1,000 square feet of floor space and shall be located in a

free−standing building that is not part of or connected to a premises covered by a retail license or permit issued under s. 125.51, Stats.

SECTION 2. Tax 8.63 (1m) is created to read:

(1m) EXCEPTION TO MINIMUM REQUIREMENTS. The secretary of revenue may waive the requirement that a premises described in a permit issued under s. 125.54, Stats., be a minimum of 1,000 square feet of floor space when the secretary determines the waiver fair and equitable, if the applicant or permittee does both of the following:

(a) Submits a written request for a waiver along with the application for issuance or renewal of a permit.

(b) Clearly indicates how the requirements described in sub. (1) and s. 125.54 (7), Stats., otherwise will be or have been met.

SECTION 3. Tax 8.63 (7) is created to read:

(7) INTERNET POSTING OF PERMITTEE INFORMATION. The department shall prepare and maintain a list of all permittees under s. 125.54, Stats., and shall post the names of permittees from this list on the Internet at a site that is created and maintained by the department. The Internet site shall list the name of each permittee and the total square feet of floor space of the premises described in the permit. The department shall update the Internet site on a quarterly basis.

Note: This section interprets s. 125.54 (7), Stats.

Notice of Hearing

Transportation

NOTICE IS HEREBY GIVEN that pursuant to s. 194.407 (1) and (3), Stats., as created by 2007 Wis. Act 20, interpreting s. 194.407, Stats., the Department of Transportation will hold a public hearing on **March 5, 2008** at the Hill Farms State Transportation Building, **Room 144−B**, 4802 Sheboygan Avenue, Madison, WI, at **10:00 AM**, on the adoption of an emergency rule creating ch. Trans 178, Wis. Adm. Code, relating to the Unified Carrier Registration system.

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

A copy of the emergency rule may be obtained upon request from Carson Frazier, Wisconsin Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Room 255, P. O. Box 7911, Madison, WI 53707−7911. You may also contact Ms. Frazier by phone at (608) 266−7857 or via e−mail: carson.frazier@dot.state.wi.us.

Analysis Prepared by the Department of Transportation

Statutes interpreted

Section 94.407, Stats., as created by 2007 Wis. Act 20

Statutory authority

Section 94.407 (1) and (3), Stats., as created by 2007 Wis. Act 20.

Explanation of agency authority

Section 194.407 of the statutes authorizes the Department to implement and administer a unified registration system for motor carriers consistent with 49 USC 13908 and 14504a, and to prescribe annual fees for that registration.

Related statute or rule

Section 194. 407, Stats., 49 USC 13908 and 14504a, 49 CFR 367.

Plain language analysis

This chapter establishes in Wisconsin Administrative Code the fees to be charged under the Unified Carrier Registration (UCR) system, and establishes a method for counting the number of vehicles so that an entity knows whether it is required to register under UCR and, if so, which fee bracket applies to the entity.

Comparison with federal regulations

This emergency rule complies and is consistent with federal law and regulations pertaining to the Unified Carrier Registration system.

Comparison with rules in adjacent states

Michigan: There are no regulations pertaining to UCR, as of October 24, 2007.

Minnesota: Minnesota is not a participating state in the UCR program in 2007. There are no regulations pertaining to UCR, as of October 24, 2007.

Illinois: There are no regulations pertaining to UCR, as of October 24, 2007.

Iowa: There are no regulations pertaining to UCR, as of October 24, 2007.

Summary of factual data and analytical methodologies

This emergency rule is derived solely from federal regulation and Unified Carrier Registration Agreement, both of which are authorized by 49 USC 13908 and 14504a and implement those sections. If Wisconsin chooses not to participate in the UCR program, Wisconsin will forfeit revenues from carrier registration pursuant to federal law.

Initial Regulatory Flexibility Analysis

This emergency rule is derived solely from federal law, federal regulation, and Unified Carrier Registration Agreement. Any effect on small businesses is a result of federal law, regulation and the Unified Carrier Registration Agreement. The bill will affect some small businesses by requiring them to pay an annual registration fee based on the size of its truck fleet, with fees of $39 to $806 annually. These fees are established under federal law at 49 CFR 367.20. If Wisconsin does not charge these fees, small businesses that operate affected trucks and trailers outside this state will nevertheless be required to pay these same fees to other states. The Department's Regulatory Review Coordinator may be contacted by e−mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438−4585.

Fiscal Effect

This emergency rule is derived solely from federal law, federal regulation, and Unified Carrier Registration Agreement. Any 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 is a result of federal law, federal regulation and the Unified Carrier Registration Agreement.

Anticipated Costs Incurred by Private Sector

This rule is derived solely from federal law, federal regulation, and Unified Carrier Registration Agreement. Any cost incurred by the private sector is a result of federal law, federal regulation and the Unified Carrier Registration Agreement. Many parties subject to these fees are paying higher fees under the Single State Registration System (SSRS), which the Unified Carrier Registration fee replaces; they will see significant annual fee reductions. Numerous smaller motor carriers, motor private carriers, brokers, leasing companies, and freight forwarders are exempt from

SSRS and are made subject to Unified Carrier Registration; they will be required to pay annual fees of $39−$806 or more depending upon their size. The sum of fees collected by this state will be the same under Unified Carrier Registration as presently collected under SSRS. Under federal law, federal regulation, and the Unified Carrier Registration Agreement, the amounts of UCR registration fees is established so that the amount collected, in total, is the same as the total amount of fees that had been collected under the former SSRS program. The base of motor carriers from which the fee is collected differs from the base under the SSRS program. Therefore, some types of carriers may pay more or less fees under UCR, but the total is the same.

Copies of Emergency Rule and Contact Person

Copies of this emergency rule are available without cost upon request by writing to Carson P. Frazier, Division of Motor Vehicles, P.O. Box 7911, Madison WI 53707−7911, by calling (608) 266−7857 or via e−mail at carson.frazier@dot.state.wi.us.

To view the emergency rule via e−mail/internet, you may visit the following website: http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm.

Submittal of Proposed Rules to the Legislature

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

Commerce

(CR 07−005)

Ch. Comm 200, relating to small business enforcement discretion.

Corrections

(CR 03−124)

Ch. DOC 346, relating to secure detention facilities and juvenile portions of a county jail.

Employee Trust Funds

(CR 07−066)

Ch. ETF 11, relating to hearsay evidence in administrative appeal hearings.

Health and Family Services

(CR 07−077)

Ch. HFS 144, relating to student immunizations.

Health and Family Services

(CR 07−090)

Ch. HFS 145, relating to student immunizations: disease list revisions and reporting.

Public Service Commission

(CR 07−044)

Chs. PSC 111 and 112, relating to electric utility construction applications.

Transportation

(CR 07−084)

Ch. Trans 129, relating to motorcycle courses.

Rule Orders Filed with the Revisor of Statutes Bureau

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

Agriculture, Trade and Consumer Protection
(CR 07−006)

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

Effective 2−1−08.

Elections Board
(CR 07−059)

An order affecting ch. ElBd 3, relating to voter registration.

Effective 2−1−08.

Health and Family Services
(CR 06−081)

An order affecting ch. HFS 43, relating to training for child protective services caseworkers and supervisors.

Effective 2−1−08.

Natural Resources
(CR 07−014)

An order affecting ch. NR 20, relating to fishing on the inland, outlying, and boundary waters of Wisconsin.

Effective 2−1−08 and 4−1−08.

Natural Resources
(CR 07−025)

An order affecting ch. NR 809, relating to IESWTR, LT1, DDBP, PN, CCR, radionuclide, and total coliform rules and updating of analytical methods for public water systems.

Effective 2−1−08.

Natural Resources
(CR 07−034)

An order affecting ch. NR 140, relating to groundwater quality standards.

Effective 2−1−08.

Natural Resources
(CR 07−055)

An order affecting ch. NR 10, relating to the migratory game bird seasons and waterfowl hunting zones.

Effective 2−1−08.

Public Notices

Financial Institutions — Banking

Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts For 2008

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

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

The Department of Financial Institutions, Division of Banking, has calculated the interest rate required to be paid on escrow accounts under Section 138.052 (5), Stats., to be **0.94%** for 2008. This interest rate shall remain in effect through December 31, 2008.

Contact Person

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

Health and Family Services

State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 07−08

(Medical Assistance Reimbursement of Nursing Homes)

The State of Wisconsin reimburses Medicaid−certified nursing facilities for long−term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal Statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Centers for Medicare and Medicaid Services (CMS).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective January 1, 2008.

The proposed changes would update the payment system and make various payment−related policy changes. Some of the changes are necessary to implement various budget policies in the Wisconsin 2007−2009 Biennial Budget. Some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA residents is approximately $1,426,255 all funds, ($821,237 FFP), excluding patient liability.

The proposed changes are being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of 2007−2009 Biennial Budget Bill and to disburse the $1,426,255 allotted in the bills to a rate increase of approximately 2% for ICFs−MR. These modifications will include adjustments to the Medicaid Access Incentive for ICFs−MR in section 5.942 and create a new incentive payment in section 3.600 for ICFs−MR. It is estimated that these adjustments will provide an increase of 0.9% for State operated ICFs−MR and 5.5% for privately operated ICFs−MR.

2. Modify the labor factors in Section 5.410.

3. Implement any modifications as directed by State statutory changes or non−statutory language in the 2007−09 state budget.

Copies of the Proposed Changes

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Long Term Care
Attention: Nursing Home Medicaid Payment Plan
P.O. Box 7851
Madison, WI 53703−7851

or by faxing James Cobb at 608−264−7720.

The available proposed changes may be reviewed at the main office at any county department of social services or human services office.

Written Comments/Meetings

Written comments on the proposed changes may be sent to the Division of Health Care Financing, at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may, also, be made in the proposed changes based on comments received at these forums.

Health and Family Services

State of Wisconsin Medicaid Payment Plan for FY 2007−2008
Medicaid Reimbursement for Inpatient Hospital Services:
Acute Care Hospitals, Children's Hospitals and Major Border Status Hospitals

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

Under current law, Wisconsin hospitals are paid on a reimbursement system based on Diagnosis Related Groupings (DRGs). The DRG system covers Acute Care Hospitals, Children's Hospitals and Major Border Status Hospitals. Each hospital is assigned a unique hospital specific cost−based DRG rate. In addition, a cost outlier payment is made when the cost of providing services exceeds a pre−determined trimpoint. The Department intends to modify the inpatient rate setting methodology for Acute Care Hospitals, Children's Hospitals and Major Border Status Hospitals to reflect the budget approved by the Legislature.

The Department is proposing to implement a rate setting methodology change for these providers that would establish provider payment rates to the approved SFY 2007 levels. This change will impact inpatient hospital services provided by: Acute Care Hospitals, Children's Hospitals and Major Border Status Hospitals. The effective date for these proposed changes will be January 1, 2008; however, rate adjustments will impact all SFY 2008 claims.

Acute Care Hospitals, Children's Hospitals and Major Border Status Hospitals

Under the proposed changes, the Department will reimburse hospitals based on Diagnosis Related Groupings (DRGs). The Department will adjust DRG payment rates in a way such that, when combined with the rates in effect for July 1, 2007 to December 31, 2007, the aggregate effect is to freeze each hospital's DRG payment rate at the final approved SFY 2007 rate. Under this methodology, each hospital is assigned a hospital specific DRG base rate. This rate includes adjustments for differences in wage levels, includes an amount for capital expenditures, and payment enhancements for qualifying Disproportionate Share Hospitals and facilities with Graduate Medical Education programs. In addition, a cost outlier payment is made when the cost of providing services exceeds a pre−determined trimpoint. The provider specific, cost based DRG rates for providers are adjusted as necessary to ensure budget compliance.

Proposed Change

The proposed change is to the adjust DRG payment rates in a way such that, when combined with the rates in effect for July 1, 2007 to December 31, 2007, the aggregate effect is to freeze each hospital's DRG payment rate at the final approved SFY 2007 rate.

There is no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remain the same. The effective date for these proposed changes will be January 1, 2008 with rate adjustments impacting all SFY 2008 claims.

Copies of the Proposed Change

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

Regular Mail
Division of Health Care Financing
P.O. Box 309
Madison, 53701−0309

Phone
James Vavra, Director
Bureau of Fee−for−Service Health Care Benefits
(608) 261−7838

FAX
(608) 266−1096
Attention: James Vavra

E−Mail
vavrajj@dhfs.state.wi.us

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

Written Comments

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e−mail, or regular mail to the Division of Health Care Financing. The FAX number is (608) 266−1096. The e−mail address is vavrajj@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, Wisconsin 53707−7840

First Class Mail

Dated Material. Please Do Not Delay!