

# Wisconsin Administrative Register

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

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

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

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

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

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

*Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.*

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### Agriculture, Trade & Consumer Protection (2)

1. 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 Date: January 14, 2008**

**Extension Through: May 31, 2008**

2. **EmR0804** – Creating **subch. IV of Ch. ATCP 161**, relating to the “buy local” grant program created under s. 93.48, Stats.

#### Exemption From Finding of Emergency

DATCP has general authority under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. Section 93.48 (1), Stats., specifically requires DATCP to adopt rules for the “buy local” grant program. Section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act) authorizes DATCP to adopt temporary emergency rules without the normal “finding of emergency,” pending the adoption of “permanent” rules. This temporary emergency rule implements the “buy local” grant program on an interim basis, pending the adoption of “permanent” rules.



**Publication Date:** February 22, 2008  
**Effective Date:** February 22, 2008  
**Expiration Date:** May 1, 2009  
**Hearing Date:** May 30, 2008

**Commerce**

*Licenses, Certifications, etc., Ch. Comm 5*

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

**Exemption From Finding of Emergency**

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

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

**Publication Date:** June 1, 2007  
**Effective Date:** June 1, 2007  
**Expiration Date:** See section 7 (2), 2005 Wis. Act 456  
**Hearing Date:** June 27, 2007

**Commerce**

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

**EmR0802** – Creating **Ch. Comm 132**, relating to implementing a program for certifying applicants and allocating dairy manufacturing facility investment tax credits, and affecting small businesses.

**Finding of Emergency**

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public welfare.

The facts constituting the emergency are as follows. Under sections 71.07 (3p) (b), 71.28 (3p) (b), and 71.47 (3p) (b) of the Statutes, as created in 2007 Wisconsin Act 20, a taxpayer may claim a dairy manufacturing facility investment credit for dairy manufacturing modernization or expansion during taxable years beginning after December 31, 2006. Sections 71.07 (3p) (a) 3., 71.28 (3p) (a) 3., and 71.47 (3p) (a) 3. of the Statutes define dairy manufacturing modernization or expansion as “constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for dairy manufacturing . . . if acquired and placed in service in this state during taxable years that begin after December 31, 2006, and before January 1, 2015.” Section 71.07 (3p) (c) 2m. a. of the

Statutes states that the maximum amount of credits that may be claimed in fiscal year 2007–08 is \$600,000.

Section 560.207 of the Statutes, as likewise created in 2007 Wisconsin Act 20, requires the Department to (1) implement a program for certifying taxpayers as eligible for the dairy manufacturing facility investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in consultation with the Department of Revenue, promulgate rules to administer the program. No other provisions are established in the Statutes regarding the specific process for taxpayers to use in applying for the credits, and for the Department of Commerce to use in certifying eligible taxpayers and in allocating the credits.

Because of enactment of 2007 Wisconsin Act 20, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been incurred during taxable years that began after December 31, 2006.

Entities that may be eligible for the tax credits for the 2007–08 fiscal year face near-term time constraints for filing their tax returns with the Department of Revenue. Although the Department of Commerce has begun promulgating the permanent rule that is required by 2007 Act 20, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to readily accommodate claiming the tax credits for the 2007–08 fiscal year. This emergency rule will enable the Department of Commerce to establish an application, certification, and tax credit allocation process for the entities that need to soon file their tax returns for taxable years beginning after December 31, 2006.

**Publication Date:** February 4, 2008  
**Effective Date:** February 4, 2008  
**Expiration Date:** July 3, 2008  
**Hearing Date:** May 14, 2008

**Corrections**

**EmR0812** – Rules adopted revising **s. DOC 332.19**, relating to the establishment of a sex offender registration fee to partially offset the costs of monitoring persons who are required to register as sex offenders.

**Finding of Emergency**

The department of corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is: 2007 WI Act 20, section 3132, amended s. 301.45 (10), Stats., in three ways which requires an immediate amendment of s. DOC 332.19.

First, the newly amended s. 301.45 (10), Stats., expands the persons whom the department of corrections may require to pay an annual sex offender registration fee. Previously, the department was limited to assessing the fee only against those persons who were required to register and who were in its custody or under its supervision as a person on probation, parole, or extended supervision. The new law permits the department to require all persons who are required to register as a sex offender to pay an annual fee.

Second, the new law limits the use of the collected sex offender fees to partially offset the costs of monitoring sex offenders. Previously, the department was authorized to use the collected fees to partially offset the costs of monitoring those persons on probation, parole, or extended supervision,

regardless of whether they were required to register as sex offenders.

Third, the legislature increased the maximum annual rate from \$50 to \$100. If the rule is not amended promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of monitoring persons who are required to register as sex offenders. This could result in a lessening of supervision due to budget limitations.

The purpose of the emergency rule is to amend the current rule to require all persons who are required to register as sex offenders under s. 301.45 to pay the annual fee which is used to partially offset the costs of monitoring registrants. The emergency rule also increases the annual rate to \$100. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of fees while permanent rules are being developed.

**Publication Date:** May 15, 2008  
**Effective Date:** May 15, 2008  
**Expiration Date:** October 12, 2008

### Government Accountability Board

**EmR0803** – Repealing s. **Eth 3.01**, relating to the filing of all written communications and documents intended for the former Ethics Board; repealing s. **Eth 3.04**, relating to transcripts of proceedings before the former Ethics Board; and amending s. **EIBd 10.01**, relating to procedures for complaints with the former State Elections Board.

#### Finding of Emergency

The Government Accountability Board adopts this rule to clarify the complaint procedure applicable to complaints that will be filed with the Board under ethics, lobbying, contract-disclosure and campaign finance law and the separate complaint procedure applicable to complaints filed under elections law and the Help America Vote Act.

The Government Accountability Board finds that an emergency exists in the 2007 change in Wisconsin law that establishes the Wisconsin Government Accountability Board (effective January 10, 2008). Under 2007 Wisconsin Act 1, a statutory procedure or framework for investigation of complaints related to ethics, lobbying, contract disclosure and campaign finance, was established. That framework does not include the necessity of the filing of a complaint. Under the rules of the former Elections Board, Chapter EIBd 10, however, an investigation will not be commenced without the filing of a verified complaint. The Government Accountability Board finds that an emergency exists in the possible confusion that potential complainants may find in attempting to file a complaint with the Government Accountability Board and, as a result of that confusion, those complainants may be dissuaded from filing a complaint over which the Board has jurisdiction, or, because of that confusion, may fail to file that complaint in a timely fashion.

**Publication Date:** February 10, 2008  
**Effective Date:** February 10, 2008  
**Expiration Date:** July 9, 2008  
**Hearing Date:** June 2, 2008

### Health and Family Services

#### *Management & Technology & Strategic Finance, Chs. HFS 1—*

**EmR0810** – Rule adopted amending ss. **HFS 10.55 (1) and 10.56 (2)**; and creating ss. **HFS 10.55 (1m) and 10.56 (2m)**, relating to fair hearings and continuation of benefits pending the outcome of a grievance, Department review, or fair hearing under the family care program.

#### 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:

2007 Wisconsin Act 20 eliminates entitlement to non-Medicaid eligibility for Family Care, which could result in some Family Care enrollees being determined ineligible and disenrolled from the program.

In addition, the federal Centers for Medicare and Medicaid Services (CMS) has restricted the Family Care benefit for enrollees at the non-nursing home level of care.

Currently, under ss. HFS 10.55 and 10.56, persons whose services are terminated may request a hearing and continuation of benefits during an appeal. Individuals who appeal the loss of non-Medicaid eligibility or reduction of services as a result of the restriction of the benefit for people eligible at the non-nursing home level of care will lose the appeal because the change in law and federal policy makes it clear that they are no longer entitled to those benefits. In addition, if benefits continued during an appeal, the individual would be responsible for repayment of the cost of continued services. Therefore, the right to appeal is of no real benefit.

HFS 10.56 (2) gives enrollees whose services are reduced or terminated the option to request continuation of services during a fair hearing, grievance, or Department review of the termination or reduction of services. For individuals appealing the loss of non-Medicaid eligibility, or termination or reduction of services as a result of the restriction of the benefit for people eligible at the non-nursing home level of care, continuation of services will be counter-productive to the welfare of the appellant, because the termination and reduction of benefits will have resulted from a change in law. The appellant will lose the appeal and as a result of the loss, be responsible for the cost of the continued services, which may be significant as costs could be in the thousands of dollars.

Under this emergency order, the Department is providing an exception to the right to a fair hearing and continuation of services during a fair hearing, grievance, or Department review when Family Care benefits are reduced or terminated by an act of the federal government or the state legislature and the individual whose benefits have been terminated or reduced does not dispute that he or she falls within the category of persons for whom the benefit was reduced or terminated. The Department has determined that appeals and continuation of benefits under these circumstances would be detrimental to the welfare of approximately 730 individuals and should be prevented.

**Publication Date:** April 7, 2008  
**Effective Date:** April 7, 2008  
**Expiration Date:** September 4, 2008  
**Hearing Date:** May 12, 2008

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## Health and Family Services

### *Health, Chs. HFS 110—*

Rules adopted revising s. HFS 115.04, to include the condition known as Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the list of disorders and disorder types found under s. HFS 115.04.

#### **Finding of Emergency**

The early identification of particular congenital and metabolic disorders that are harmful or fatal to persons with the disorders is critical to mitigating the negative effects of such disorders. Therefore, s. 253.13, Wis. Stats., requires that every infant born be subjected to blood tests for congenital and metabolic disorders, as specified in administrative rules promulgated by the Department; however, parents may refuse to have their infants screened for religious reasons. The Department has issued ch. HFS 115, Screening of Newborns for Congenital and Metabolic Disorders, to administer this statutory requirement. Currently, s. HFS 115.04 lists 13 congenital and metabolic disorders and types of disorders, for a total of 47 different disorders, for which the state hygiene laboratory must test newborn blood samples.

In determining whether to add or delete disorders from the list under s. HFS 115.04, s. HFS 115.06 directs the Department to seek the advice of persons with expertise and experience concerning congenital and metabolic disorders. For this purpose, the Department has established the Wisconsin Newborn Screening Umbrella Advisory Group. Section HFS 115.06 also lists 6 criteria on which the Department must base its decision to add or delete disorders from s. HFS 115.04. These criteria are as follows:

1. Characteristics of the specific disorder, including disease incidence, morbidity, and mortality.
2. The availability of effective therapy and potential for successful treatment.
3. Characteristics of the test, including sensitivity, specificity, feasibility for mass screening and cost.
4. The availability of mechanisms for determining the effectiveness of test procedures.
5. Characteristics of the screening program, including the ability to collect and analyze specimens reliably and promptly, the ability to report test results quickly and accurately and the existence of adequate follow-up and management programs.

The Department will immediately promulgate identical permanent rules to replace these emergency rules.

**Publication Date:** December 27, 2007  
**Effective Date:** January 1, 2008  
**Expiration Date:** May 30, 2008  
**Hearing Date:** March 6, 2008

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## Natural Resources

### *Environmental Protection – General, Chs. NR 100—*

**EmR0809** – Rule adopted to repeal s. NR 198.15 (2), to renumber s. NR 198.12 (6) to (10), to amend ss. NR 198.11, 198.14 (1) (e) and (f) 2., 198.23 (5) to (7), 198.33 (5), and 198.44 (5) and to create ss. NR 198.12 (6) and (7), 198.33 (6)

and subch. V of ch. NR 198, relating to grants for the control of aquatic invasive species.

#### **Finding of Emergency**

The substantial increase in grant funding is a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The appropriation from which these funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department's ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule's limitations. An emergency rule will help to minimize or eliminate the amount of funds that are lapsed.

**Publication Date:** April 7, 2008  
**Effective Date:** July 1, 2008  
**Expiration Date:** November 28, 2008

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## Public Instruction (4)

1. A rule is adopted creating ch. PI 33, relating to grants for nursing services.

#### **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 22, 2008  
**Hearing Date:** February 21, 2008  
**Extension Through:** June 20, 2008

2. **EmR0801** – Creating ch. PI 31, relating to grants for science, technology, engineering, and mathematics programs.

#### **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 STEM program under s. 115.28 (46), Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$61,500 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:** January 30, 2008  
**Effective Date:** January 30, 2008  
**Expiration Date:** June 28, 2008  
**Hearing Dates:** March 18 and 21, 2008

3. **EmR0805** – Creating ch. PI 16, relating to four-year-old kindergarten grants.

#### 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 4-year-old kindergarten grant program under s. 115.445, Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$3 million annually beginning in the 2008–09 school year. In order for school districts to develop application criteria and procedures in time for the program to operate in the upcoming school year, rules must be in place as soon as possible.

**Publication Date:** February 25, 2008  
**Effective Date:** February 25, 2008  
**Expiration Date:** July 24, 2008  
**Hearing Date:** April 17, 2008

4. **EmR0813** – A rule is adopted revising **ch. PI 37**, relating to grants for national teacher certification and master educator licensure.

#### Finding of Emergency

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

The new provisions modifying the grants for the national teacher certification program under 2007 Wisconsin Act 20, the biennial budget bill, took effect October 27, 2007. In order to establish the new application criteria and procedures to award grants to eligible applicants in the 2007–08 school year, emergency rules must be in place as soon as possible.

**Publication Date:** May 17, 2008  
**Effective Date:** May 17, 2008  
**Expiration Date:** October 14, 2008

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### Regulation and Licensing

**EmR0811** – Rule adopted amending **s. RL 16.06 (1) (a), (b) and (d)**, relating to how to use approved forms for the practice of real estate.

#### Finding of Emergency

The Department of Regulation and Licensing finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments into effect prior to the time the amendments would take if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, WB-1, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified

form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing education class demonstrating the allowed means to modify an approved form. The modified form was shown to industry stakeholders, the department's council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule-making to prevent modification of forms such as WB-1 in the manner submitted.

**Publication Date:** April 16, 2008  
**Effective Date:** April 16, 2008  
**Expiration Date:** September 13, 2008  
**Hearing Date:** June 26, 2008

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### 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:** See Section 2927, 2007 Wis. Act 20  
**Hearing Date:** March 5, 2008

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### Workforce Development (3)

#### *Family Supports, Chs. DWD 12 to 59*

1. Rule adopted amending **s. DWD 56.06 (1) (a) 1. and creating s. DWD 56.06 (1) (a) 1. r.**, relating to child care rates.

#### Finding of Emergency

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

2007 Wisconsin Act 20 reflects that child care rates will not be increased for the 2008–2009 biennium. Chapter DWD 56 currently provides that child care rates shall be set annually in accordance with a market rate survey and procedures described in s. DWD 56.06 (1). Historically, the rate adjustments have been effective January 1 of the new year. This emergency rule is necessary to provide that child care rates will not be adjusted for 2008 in accordance with 2007 Wisconsin Act 20. A corresponding permanent rule will provide that child care rates will not be adjusted for 2008 and 2009.

**Publication Date:** December 27, 2007  
**Effective Date:** January 1, 2008  
**Expiration Date:** May 30, 2008  
**Hearing Date:** March 10, 2008

2. **EmR0806** – Rule adopted amending s. **DWD 56.08 (1) and (2) (a), (e), and (f)** and repealing and recreating **Table DWD 56.08**, relating to child care copayments and affecting small businesses.

#### **Finding of Emergency**

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

The federal Department of Health and Human Services is requiring that Wisconsin eliminate different copayment amounts for families who receive child care services from a certified provider and families who receive child care services from a licensed provider. The change to the copayment schedule must be implemented by April 1, 2008, or Wisconsin risks losing \$82 million annually from the Child Care Development Fund.

**Publication Date:** February 27, 2008  
**Effective Date:** March 30, 2008  
**Expiration Date:** August 27, 2008  
**Hearing Date:** April 11, 2008

3. **EmR0807** – Rule adopted amending s. **DWD 56.04 (1) (a) 1., (2) (a) 1. b., and (5) (c)**; and repealing and recreating s. **DWD 56.04 (2) (d)**, relating to child care enrollment underutilization.

#### **Finding of Emergency**

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

The Department projects a potential current year budget shortfall in the child care subsidy program of \$18.6 million if no corrective measures are taken. This rule will provide for more efficient use of the program's limited funding.

**Publication Date:** March 24, 2008  
**Effective Date:** March 30, 2008  
**Expiration Date:** August 27, 2008  
**Hearing Date:** May 19, 2008

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## Scope Statements

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### Architects, Engineers, Designers and Land Surveyors

#### Subject

Revises Chapters A–E 1 to 9 to create continuing education requirements for renewal of a credential for licensees within the jurisdiction of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors as permitted in s. 443.015, Stats., by recently enacted 2007 Wisconsin Act 47.

#### Objective of the Rule

To create continuing education requirements for licensees within the jurisdiction of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

#### Policy Analysis

Existing rules relating to the licensure requirements for architect, landscape architect, professional engineer, designer and land surveyor licensees can be found in chs. A–E 1 to 9.

#### Statutory Authority

Sections 15.08 (5) (b), 15.405 (2), 227.11 (2) and 443.015, Stats.

#### Entities Affected by the Rule

Architect, Landscape Architect, Professional Engineer, Designer and Land Surveyor licensees.

#### 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.

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

200 hours

### Architects, Engineers, Designers and Land Surveyors

#### Subject

Revises section A–E 6.03 relating to land surveyor experience requirements to correct a drafting error in recently adopted rules. This rule change will correct administrative code and statutory citations.

#### Objective of the Rule

To correct recently adopted rules that contained incorrect statutory and administrative code citations.

#### Policy Analysis

Existing rules relating to land surveyor experience that applicants need to acquire to obtain licensure can be found in s. A–E 6.03.

#### Statutory Authority

Sections 15.08 (5) (b), 15.405 (2) and 227.11 (2), Stats.

#### Entities Affected by the Rule

Applicants for Land Surveyor registration.

### Comparison with Federal Regulations

This is not an area which is regulated by federal law or is subject to any proposed federal legislation. The standards for state licensure are regulated by each state.

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

25 hours.

### Financial Institutions — Wisconsin Consumer Act

#### Subject

Creates s. DFI–WCA 1.84, relating to unconscionable conduct.

#### Objective of the Rule

The purpose of the rule is to set forth that it is an unconscionable and prohibited practice for any merchant to preclude a customer from asserting claims or seeking remedies available under the Wisconsin Consumer Act, including bringing, joining or participating in efforts to obtain class-wide relief.

#### Statutory Authority

Sections 425.107 (2), 426.104 (1) (e), 426.108 and 227.11 (2), Stats.

#### Entities Affected by the Rule

Entities subject to the Wisconsin Consumer Act that are engaged in consumer credit transactions and the collection of debts arising from consumer credit transactions.

#### Comparison with Federal Regulations

The department is aware of no such regulation.

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

150 hours.

**Note:** A scope statement filed on December 26, 2007 by the department creating s. DFI–WCA 1.84 is withdrawn.

### Government Accountability Board

#### Subject

Amends Chapter GAB 3, relating to voter registration, to provide work process and registration administration guidelines.

#### Objective of the Rule

The proposed rules will give direction to municipal and county clerks and their staff in the processing of voter registrations and voter registration information and to promote the accuracy of the information in the system.

#### Policy Analysis

The proposed rules will be drafted to update and supplement Chapter GAB 3 to delineate and clarify election officials' voter registration responsibilities; to detail the procedure for handling voter verification postcards and to

establish Statewide Voter Registration System (SVRS) data entry standards.

#### **Statutory Authority**

Sections 5.05 (1) (f) and (c), 6.26 (3), and 227.11 (2) (a), Stats.

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

All municipal and county clerks and their staff.

#### **Comparison with Federal Regulations**

The federal government does not have a voter registration system, but to implement the requirements of the Help America Vote Act and the plan adopted by the State Elections Board (now the Government Accountability Board) to implement the Help America Vote Act, Wisconsin was required to establish a system of statewide voter registration. Wisconsin has done that in the promulgation of Chapter GAB 3. This rule enhances and clarifies Chapter GAB 3 and the implementation and administration of the Statewide Voter Registration system and establishes the work process guidelines to administer it.

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

At least 60 hours of state employees' time.

### **Government Accountability Board**

#### **Subject**

Amends Chapter GAB 5, relating to ballot and electronic voting system security.

#### **Objective of the Rule**

The proposed rules will ensure that ballots, whether in paper, optical scan or electronic format, and electronic voting systems remain secure, from delivery to a municipal clerk until destruction under s. 7.23, Stats., is authorized.

#### **Policy Analysis**

The proposed rules will be drafted to update and supplement Chapter GAB 5 to provide verification procedures to ensure that that ballots and electronic voting systems remain secure and tamper-free for pre-election testing, election-day testing and performance and post-election verification and audit.

#### **Statutory Authority**

Sections 5.05 (1) (f) and (c), 5.905 (3), 7.51 (3), and 227.11 (2) (a), Stats.

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

All municipal and county clerks and their staff.

#### **Comparison with Federal Regulations**

Ballot and electronic voting system security is a state or local election function and not a function of the federal government. Federal regulations do not govern ballot security or electronic voting system security. Testing of electronic voting equipment, however, is currently done at the national level by the Federal Election Assistance Commission.

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

At least 40 hours of state employees' time.

### **Health and Family Services**

#### **Mgmt. & Technology & Strategic Finance, Chs. HFS 1—**

#### **Subject**

Revises Chapter HFS 12, relating to caregiver background checks, to specify crimes for which an entity must disclose, to a client or the client's guardian, a conviction of a caregiver who is assigned to provide personal care services to the client in the client's personal residence and to specify who is a "substitute caregiver".

#### **Policy Analysis**

Effective November 1, 2008, 2007 Wisconsin Act 172 creates s. 50.065 (2m) (a) and (b), Stats., to require entities, including home health agencies and temporary employment agencies to conduct background checks of caregivers who are assigned to provide personal care services to a client in the client's private residence. The entity is further required to disclose to the client, or to the client's guardian, information regarding any conviction of the caregiver of a crime that is specified by the department by rule, and information concerning that person's history of child abuse or neglect; abuse or neglect of a client; misappropriation from a client; or denial of licensing or certification to serve as an entity. The statute exempts entities from having to make the referenced disclosures for "substitute caregivers" as the department defines that term by rule.

2007 Wisconsin Act 172 also requires the department to specify by rule, the crimes for which an entity must disclose a conviction of its caregivers who are assigned to provide services in a client's personal residence. Under s. 50.065 (2m) (d), Stats., as created by 2007 Wisconsin Act 172, the department intends to propose a list of crimes for which an entity must disclose the conviction to a client or client's guardian, and a definition of the term "substitute caregiver". The department may also propose additional updates to the rules.

The creation of s. 50.065 (2m) (a) and (b) first applies to placement of caregivers that are made on April 10, 2008. The 2007 Wisconsin Act 172 takes effect November 1, 2008.

#### **Statutory Authority**

Sections 50.065 (1) (ag) 1. a., (d), (f), (2) (d), (4), (5), (6) (b) and (c), and (2m) (d) as created by 2007 Wisconsin Act 172, and 227.11 (2) (a), Stats.

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

Entities that may be affected by the proposed rule include temporary employment agencies, homes health agencies, assisted living facilities, and consumer advocates, including the Board on Aging and Long Term Care.

#### **Comparison with Federal Regulations**

There are no comparable existing or proposed federal regulations.

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

The Department estimates that it will take 500 hours to draft the rulemaking order. In drafting the rule, the Department will seek the participation of the Wisconsin Personal Services Association, the Wisconsin Home Care Advisory Committee, the Wisconsin Assisted Living Association, Disability Rights Wisconsin Inc., and the Board on Aging and Long Term Care.

## **Health and Family Services**

### *Medical Assistance, Chs. HFS 100—*

#### **Subject**

Revises section HFS 107.28 (1) (a) to authorize the Department to remove certain services from among the services provided by managed care organizations under the Wisconsin Medical Assistance program.

#### **Policy Analysis**

Under 2007 Wisconsin Act 20, the Wisconsin Budget Act for the FY 2008 – 2009 biennium, the Department is charged with realizing a \$60,886,500, all funds, cost savings in the Medicaid program during state fiscal year 2008–09. As indicated in the Legislative Fiscal Bureau summary of the budget bill, these savings could potentially be realized by modifying how pharmacy services are provided to Medicaid recipients enrolled in Medicaid managed care organizations.

Under current Medicaid managed care contracts, each managed care organization must include pharmacy benefits as part of its services to persons receiving Medicaid benefits, including persons receiving BadgerCare and Senior Care. Under this arrangement, the Medicaid program cannot achieve the economies of scale or leverage its purchasing power to achieve the cost savings needed. To be able to realize the savings required during the biennium, the Department began consolidating its pharmacy services benefit under a single pharmacy benefit manager, on February 1, 2008. The Department believes that the Medicaid program could achieve cost savings similar to that achieved under the consolidation of pharmacy services for Wisconsin state employees.

The Department intends to modify s. HFS 107.28 (1) (a) to add language that clarifies the circumstances under which the Department may exempt from coverage, services under its contract with HMOs. Section HFS 107.28 (1) (a) currently lists those services that an HMO is currently exempt from providing to Medicaid enrollees under a Medicaid contract. Though the intended proposed rules are not needed to effectuate the change, the Department believes that any questions concerning the methods for exempting services from coverage under an HMO contract will be alleviated if a change in rule is made.

#### **Statutory Authority**

Sections 49.45 (10) and 227.11 (2) (a), Stats.

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

Pharmacies and managed care organizations will be affected by the proposed rules.

#### **Comparison with Federal Regulations**

Section 447.331(b) of Title 42 of the Code of Federal Regulations specifies upper limits for multiple source drugs. This revision will assist the state in complying with the requirements of that provision, by enabling the state to reimburse providers for purchasing prescription drugs in greater amounts. Also, 42 USC 1396r–8 requires state Medicaid programs that pay for prescription drugs on a fee–for–service basis to collect substantial rebates from drug manufacturers. Carving Wisconsin’s Medicaid prescription drug benefit out of Medicaid managed care and paying for drugs on a fee–for–service basis will result in realizing these rebates on prescription drugs for all WI Medicaid beneficiaries. 42 USC 1396u–2 (a) (5) (D) requires a state to “inform the enrollee in a written and prominent manner of any

benefits to which the enrollee may be entitled to under this title but which are not made available to the enrollee through the entity.” Section 1396u–2 is also known as section 1932 of the Social Security Act. This provision provides states with the authority to provide some Medicaid benefits through a provider outside of the managed care contract.

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

40 hours.

## **Insurance**

#### **Subject**

Revises Chapters Ins 6, 26 and 28, relating to licensing, preclicensing and continuing education for insurance agents and affecting small business.

#### **Objective of the Rule**

To revise the procedures and requirements for licensing, preclicensing and continuing education for insurance agents to conform with recently enacted 2007 Wisconsin Act 169, the NAIC (National Association of Insurance Commissioners) Producer Model Act, NAIC Uniform Resident Licensing Standards, NAIC Uniform Continuing Education (“CE”) Standards and to allow for periodic technological enhancements to improve the efficiency and cost effectiveness of the licensing process.

#### **Policy Analysis**

2007 Wisconsin Act 169 revised the revocation procedures. These changes will modify the rules to reflect the policy choices in Act 169.

#### **Statutory Authority**

Sections 601.41 (3) and 628.04 (3), Stats., and the revisions contained in Act 169.

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

Insurance Intermediaries (individuals and firms), Preclicensing Education Schools, Continuing Education Providers and Insurers.

#### **Comparison with Federal Regulations**

There is currently no federal regulation of insurance agent licensing requirements. The threat of federal regulation in the insurance industry has been proposed over the past several years. Uniform standards in licensing and continuing education will eliminate the need for federal regulation in the future.

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

200 hours and no other resources are necessary

## **Regulation and Licensing**

#### **Subject**

Revises Chapter RL 91, relating to application for certification as a massage therapist or bodyworker as per 2007 Wisconsin Act 104.

#### **Objective of the Rule**

2007 Wisconsin Act 104 will amend ch. 460, Stats., Massage Therapy and Bodywork. The effect of the Act requires the Department of Regulation and Licensing to amend administrative rules of application for certification as a massage therapist or bodyworker. As per provisions of 2007



Wisconsin Act 104, the proposed rule shall include the requirement for applicants to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification.

### **Policy Analysis**

The massage therapy and bodywork statute and administrative rules regarding application for certification, reciprocal certification and renewal do not have a requirement for training and proficiency in the use of an AED. The Act directs the department to promulgate into rule the requirement for AED training and proficiency as a requirement for initial certification. The Act amended ch. 460, Stats., to include AED training and proficiency as one of the requirements for renewal, but does not mandate the department to update administrative rules of renewal.

The Act provides that the department may promulgate rules for certification as emergency rules without finding of emergency, and such rules shall remain in effect until the date at which permanent rules take effect (as per nonstatutory provisions of 2007 Wisconsin Act 104).

### **Statutory Authority**

Section 227.11 (2), Stats., and s. 460.04 (2), Stats., 2007 Wisconsin Act 104.

### **Comparison with Federal Regulations**

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

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

Applicants for certification as a massage therapist or bodyworker.

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

160 hours.

## **Transportation**

### **Subject**

Creates Chapter Trans 123, relating to grounds for refusing registration.

### **Objective of the Rule**

The rule will:

- Clarify that Department of Transportation registration or refusal of registration of vehicles conforms to National Highway Traffic Safety Administration (NHTSA) regulations and policy memoranda implementing Federal Motor Vehicle Safety Standards (FMVSS).

- Distinguish between on-road vehicles and off-road vehicles, according to NHTSA interpretations. The rule distinguishes among vehicles manufactured: (1) before 1968 (when FMVSS became effective); (2) since a "rolling" date 25 years prior to the current date (when NHTSA regulations regarding FMVSS for imported vehicles apply); and (3) between 1968 and the rolling date of 25 years prior to the current date.

- Clarify that DMV will refuse to register all off-road vehicles that are not manufacturer-certified as meeting on-road standards and any on-road vehicles manufactured after 1968 unless they:

- Are manufacturer-certified as meeting FMVSS;

- Are imported by NHTSA-registered importer and determined to meet FMVSS for year of manufacture (may require retrofitting);

- Are exempt from FMVSS at time of importation but are certified by NHTSA-registered importer as meeting FMVSS for year of manufacture; or

- Are listed by NHTSA as 'substantially similar' to FMVSS-conforming US model.

### **Policy Analysis**

The Department had for several years followed a policy interpreting s. 341.10 (6), Stats., which prohibits the Department from registering off-road vehicles that do not meet the requirements of s. 114 of the National Traffic and Motor Vehicle Safety Act of 1966. This Department policy does not define "off-road" vehicles but essentially refuses to register for on-road use any vehicle that does not meet federal on-road safety and equipment standards. The Department concluded that the statutory provision requires Wisconsin to conform to federal regulations. Federal regulations include agency interpretations distinguishing between "on-road" and "off-road" vehicles. The Department has revised its policy to conform to federal interpretations.

This rule making will also clarify the current Department policy that more clearly identifies "on-road" and "off-road" vehicles and what safety requirements are required for registration.

### **Statutory Authority**

Sections 85.16 and 341.10 (6), Stats.

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

Wisconsin citizens and businesses who apply to register in Wisconsin vehicles that were manufactured after 1968 for other than the US on-road market will be affected by the rule. In addition, collectors of vehicles that are non-standard vehicles will be affected. Motor vehicle dealers and vehicle importers will be affected.

### **Comparison with Federal Regulations**

Federal NHTSA regulations implement FMVSS. NHTSA defines motor vehicles as those that use "the public highways on a necessary and recurring basis." This rule making will distinguish between vehicles manufactured for on-road and off-road use, conforming to NHTSA regulations. The rule will clarify that the Department will register or will refuse to register vehicles based on distinctions conforming to federal NHTSA regulations and interpretations.

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

100 hours

## **Transportation**

### **Subject**

Amends Chapter Trans 195, to implement s. 110.09 (1) and (2), Stats., relating to background check requirements of certain Division of Motor Vehicle (DMV) employees and others who request access to certain DMV information systems.

### **Objective of the Rule**

The rule making will consider confidentiality of information, type and frequency of background checks, disqualifying offenses and appeals process. Ch. Trans 195 will be amended for consistency with s. 110.09 (1) and (2) and will reference other rules s. 110.09, Stats., may impact. Trans

195 provides guidance on fees and procedures for search and documentation of motor vehicle records and was updated in 2007 to include background checks for outside entities prior to authorizing access to motor vehicle records. The rule changes will also implement Federal Rule 6 CFR Part 37.45 for the federal Real ID law and s. 110.09, Stats. The rule also will clarify bulk record fees.

#### **Policy Analysis**

The DMV currently completes background checks on new, transfer and promotion employees prior to authorizing on-line access to motor vehicle records. Section 110.09 (1) and (2) expands the process, adds confidentiality to the information and requires more extensive employee background checks for those who create and manufacture driver license/identification cards or access DMV information systems that contain the driver license/identification card information. Trans 195 defines fees and procedures for searches and documentation of motor vehicle records including background checks for persons other than motor vehicle employees. Section 343.24, Stats., and ch. Trans 195 define fees, but bulk record fees need clarification. Transportation Administrative Manual (TAM) Chapter 117 was updated effective February 18, 2008, to define the parameters and procedures for conducting criminal background checks when filling Department vacancies with current and new employees. TAM 117 is intended to comply with ss. 230.17 (3), 111.335 (1) (a), (b) and (c), Stats., and Chapter 246 of the Wisconsin Human Resources Handbook.

#### **Statutory Authority**

Section 110.09 (1) (c) and (2), Stats.

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

Motor vehicle employees, employees within DOT that work on motor vehicle system designs or access motor vehicle records, other government agencies, contractors, and others who access motor vehicle records online.

#### **Comparison with Federal Regulations**

The Federal Rule at 6 CFR Part 37.45 sets employee requirements for issuance of driver license and identification cards, and s. 110.09(1) and (2), Stats., defines background check expectations and requires confidentiality of the information. Section 343.24 defines expectations to obtain motor vehicle records.

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

200 hours

## **Workforce Development**

### *Family Supports, Chs. DWD 12–59*

#### **Subject**

Revises Chapter DWD 16, relating to emergency assistance for families with needy children.

#### **Policy Analysis**

Section 49.138, Stats., provides that the department shall implement a program of emergency assistance to needy persons in cases of fire, flood, natural disaster, homelessness or impending homelessness, or energy crisis. The emergency assistance program is funded by the federal Temporary Assistance for Needy Families (TANF) block grant, which requires that the funds be used for eligible needy families with a child.

The proposed rule will add a provision to the nonfinancial eligibility section regarding the child for whom emergency assistance is requested. The current rule provides that the child is or, within 6 months prior to the month of application, was living with a qualified caretaker relative. The proposed rule will provide that the child must be living with the qualified caretaker relative in the future month for which assistance is paid.

#### **Statutory Authority**

Sections 49.138 and 227.11 (2), Stats.

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

W–2 agencies and families requesting Emergency Assistance

#### **Comparison with Federal Regulations**

As a general rule, states must use TANF funds for eligible, needy families with a child and for one of the four purposes of the TANF program:

1. To provide assistance to needy families.
2. To end dependence of needy parents by promoting job preparation, work, and marriage.
3. To prevent and reduce out-of-wedlock pregnancies.
4. To encourage the formation and maintenance of two-parent families.

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

80 hours

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# Submittal of Rules to Legislative Council Clearinghouse

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

## Commerce

### *Electrical, Ch. Comm 16*

#### CR 08–047

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

#### Analysis

The proposed order revises Chapter Comm 16, relating to electrical construction.

#### Agency Procedure for Promulgation

A public hearing will be held on June 18, 2008.

#### Contact Information

Joe Hertel  
(608) 266–5649  
joe.hertel@wisconsin.gov

## Commerce

### *Uniform Dwelling Code, Chs. Comm 20–25*

#### CR 08–043

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

#### Analysis

The proposed order revises Chapters Comm 20 to 25, relating to the uniform dwelling code.

#### Agency Procedure for Promulgation

A public hearing is required and is scheduled for June 19, 2008. The Safety and Buildings Division is responsible for promulgation of the rules.

#### Contact Information

Duane Hubeler, Engineering Consultant  
(608) 266–1390  
duane.hubeler@wisconsin.gov

## Corrections

#### CR 08–045

On May 8, 2008, the Department of Corrections submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed order amends section DOC 332.19, relating to the sex offender registration fee

## Agency Procedure for Promulgation

A public hearing is required and will be scheduled at a later date. The Division of Community Corrections is responsible for promulgation of the rules.

#### Contact Information

Kathryn R. Anderson, Chief Legal Counsel  
(608) 240–5049  
kathryn.anderson@wisconsin.gov

## Health and Family Services

### *Health, Chs. HFS 110—*

#### CR 08–042

On May 6, 2008, the Department of Health and Family Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed order revises Chapter HFS 129, relating to certification of programs for training and testing nurse aides and feeding assistants.

#### Agency Procedure for Promulgation

Public hearings will be held on June 12, 13, 16 and 17, 2008.

#### Contact Information

For substantive questions on rules contact:  
Pat Benesh, Quality Assurance Program Spec–Senior  
Division of Quality Assurance  
1 West Wilson Street  
Room 1150  
Madison, WI 53701  
Phone: 608–264–9896  
Fax: 608–267–7119  
benespa@dhfs.state.wi.us

For small business considerations and rule processing information contact:

Rosie Greer  
608–266–1279  
[greerrj@dhfs.state.wi.us](mailto:greerrj@dhfs.state.wi.us)

## Natural Resources

### *Fish, Game, etc., Chs. NR 1—*

#### CR 08–046

On May 14, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed order revises section NR 47.70, relating to the county forest administration grant program.

**Agency Procedure for Promulgation**

A public hearing will be held on June 16, 2008.

**Contact Information**

Jeff Barkley  
Bureau of Forest Management  
(608) 264-9217

**Public Instruction****CR 08-044**

On May 13, 2008, the Department of Public Instruction submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order amends Chapter PI 37, relating to

grants for national teacher certification and master educator licensure.

**Agency Procedure for Promulgation**

Public hearings will be scheduled. The Division for Academic Excellence is primarily responsible for promulgation of this rule.

**Contact Information**

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

Tammy Huth, Assistant Director  
Teacher Education, Professional Development and  
Licensing  
(608) 266-1788  
tammy.huth@dpi.wi.gov.

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## Rule–Making Notices

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### Notice of Hearing

#### Commerce

#### *Electrical Construction, Ch. Comm 16*

#### CR 08–047

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.63 (1), 101.73 (1), 101.82 (1), Stats., the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 16 relating to electrical construction.

#### Hearing Information

The public hearing will be held as follows:

<b><u>Date and Time:</u></b> <b>June 18, 2008</b> Wednesday 10:00 a.m.	<b><u>Location:</u></b> Thompson Commerce Building Third Floor Conference Rm. #3B 201 W. Washington Avenue Madison, Wisconsin
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This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

#### Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until July 2, 2008, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Joe Hertel, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at [joe.hertel@wisconsin.gov](mailto:joe.hertel@wisconsin.gov).

#### Copies of Proposed Rules

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

#### Agency Contact Person

Joe Hertel, Program Manager, [joe.hertel@wisconsin.gov](mailto:joe.hertel@wisconsin.gov), or (608) 266–5649.

#### Small Business Regulatory Coordinator

Carol Dunn, at (608) 267–0297, or Email at [carol.dunn@wisconsin.gov](mailto:carol.dunn@wisconsin.gov).

### Analysis Prepared by Department of Commerce

#### *Statutes interpreted*

Section 101.82 (1), Stats.

#### *Statutory authority*

Section 101.82 (1), Stats.

#### *Related statute or rule*

- Sections 101.63 (1) and 101.73 (1) Stats.
- Chapters Comm 60 to 66, Wisconsin Commercial Building Code
- Chapters Comm 20 to 25 of the Uniform Dwelling Code
- Chapter PSC 114, Public Service Commission.

#### *Explanation of agency authority*

Section 101.82 (1), Stats., grants the Department of Commerce general authority for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for the installation, repair and maintenance of electrical wiring.

#### *Summary of proposed rules*

The primary revisions to chapter Comm 16 are to adopt the most current edition of the National Electrical Code (NEC). In addition to bringing the state electrical code up to date with current technology, the proposed revisions clarify or supplement the electrical standards contained in the 2008 edition of the NEC. The proposed rules contain a number of modifications to the technical requirements within these standards, reorganization of current requirements and editorial changes. The following is a summary of the major proposed changes to this chapter:

- a. Adopt by reference the most current edition of the NEC and include correct cross–references to these standards. [Comm 16.014]
- b. Require tamper–resistant receptacles and arc–fault circuit–interrupter protection for all new dwelling construction. [NEC 406.11 and NEC 210.12 and Comm 16.210 (2) (a) and (b) and Comm 16.210 (4)]
- c. Renumber the code sections in subchapters I, II, III and IV to correspond more closely with the article and section numbers in the NEC.
- d. Update or delete several Wisconsin amendments that referenced the NEC because of changes in the 2008 edition.

#### *Comparison with federal regulations*

There are several existing federal regulations that relate to the installation of electrical wiring and equipment. Some of these regulations require compliance with various editions of the National Electrical Code (NEC). An internet–based search of the *Code of Federal Regulations* (CFR) found the following existing federal regulations relating to the activities to be regulated by this rule:

- Title 7 CFR Part 1755 – Telecommunications Standards and Specifications for Materials, Equipment and Construction. This regulation in the Department of Agriculture applies to telecommunications wiring and equipment, and requires compliance with the 1993 NEC.
- Title 24 CFR Part 3280 – Manufactured Home Construction and Safety Standards Subpart I – Electrical Systems. This regulation in the Department of Housing

and Urban Development covers electrical systems in manufactured homes, and requires compliance with the 2005 NEC.

- Title 29 CFR Part 1910 – Occupational Safety and Health Standards. Subpart S of this regulation in the Department of Labor contains detailed electrical safety requirements that are necessary for the practical safeguarding of employees in their workplaces.
- Title 29 CFR Subpart 1926 – Safety and Health Regulations for Construction. Subpart K of this regulation in the Department of Labor contains detailed electrical safety requirements that are necessary for the practical safeguarding of employees involved in construction work.
- Title 30 Part 57 – Safety and Health Standards – Underground Metal and Nonmetal Mines. Subpart K of this regulation in the Department of Labor contains specific electrical safety requirements for the protection of employees working in underground metal and nonmetal mines.
- Title 30 Part 75 – Mandatory Safety Standards – Underground Coal Mines. Subpart F of this regulation in the Department of Labor contains specific electrical safety requirements for the protection of employees working in underground coal mines.

#### ***Comparison with rules in adjacent states***

An Internet-based search found that all adjacent states except Illinois adopt by reference various editions of the NEC. Michigan also creates amendments to the adopted standard similar to Wisconsin.

- Illinois does not administer a state electrical code.
- The Iowa Department of Public Safety administers the Iowa Building Code that adopts the 2005 edition of the NEC with no amendments.
- The Michigan Department of Labor and Economic Growth administers the Michigan Construction Code that adopts the 2005 edition of the NEC with amendments. The arc-fault protection requirement was adopted as part of the 2003 Michigan Residential Code that became effective February 29, 2004.
- The Minnesota Department of Labor and Industry, Building Codes and Standards Division, administers the Minnesota State Building Code that adopts the 2005 edition of the NEC with no amendments.

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

The primary methodology for updating the Wisconsin Electrical Code, chapter Comm 16 has been a review and assessment of the latest edition of the national technical standards that serve as the basis for Wisconsin code. Staff prepared a comprehensive comparison of the changes in the 2008 edition of the NEC to the 2005 edition currently adopted under Comm 16. The department's review and assessment process involved the participation of the Electrical Code Advisory Council. The members of that Council represent the many stakeholders involved in the electrical industry including utility representatives, inspectors, labor and building contractors. (A listing of the Electrical Code Advisory Council is provided at the end of this analysis.)

The department believes the national model codes reflect current societal values with respect to safeguarding people and property from hazards arising from the use of electricity.

The NEC (formally known as ANSI/NFPA 70) is a national standard for the safe installation of electrical wiring and

equipment. It is part of the National Fire Codes series published by the National Fire Protection Association (NFPA). The NEC is developed by NFPA's Committee on the National Electrical Code, which consists of 20 code-making panels and a technical correlating committee. The NEC is approved as an American National Standard by the American National Standards Institute (ANSI). First published in 1897, the NEC is updated and published every three years. The 2008 Code is the most recent edition, approved on August 15, 2007. Most states adopt the most recent edition within a couple of years of its publication.

More information on the development of these national model codes may be obtained from the NFPA web site at [www.nfpa.org](http://www.nfpa.org) or from the NEC web site at [www.necplus.org](http://www.necplus.org).

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

The department used the Electrical Code Advisory Council to gather and analyze information on potential impacts in complying with both the technical and administrative requirements of the codes. Many small businesses belong to the industry associations that sit on the advisory council. A responsibility of council members is to bring forth concerns that their respective organizations may have with the requirements including economic impact.

The proposed rule changes also were shared with the Commercial Buildings Code Council, Uniform Dwelling Code Council, and Multifamily Dwelling Code Council.

In addition to posting rule development and council activities on the department's web site, the department offers an Email subscription service that is available to all small businesses. This service provides Email notification of council meetings, meeting agendas and council meeting progress reports so small businesses can follow proposed code changes.

Adopting the most current edition of the NEC will not impose a significant impact on small businesses involved in the inspection, maintenance, service and installation of electrical wiring.

#### **Initial Regulatory Flexibility Analysis**

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

The proposed rules will affect any business involved with the design and installation of electrical wiring, communication systems or electrical equipment.

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

There are no reporting, bookkeeping or other procedures required for compliance with the rules.

##### ***Types of professional skills necessary for compliance with the rules***

There are no additional professional skills necessary for compliance with the rules.

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

No.

#### **Environmental Analysis**

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

exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

### **Fiscal Estimate**

#### **Summary**

The Safety and Buildings Division is responsible for administering and enforcing rules relating to the installation of electrical wiring and equipment in chapter Comm 16. The proposed rules adopt by reference the latest edition of the National Electrical Code (NEC) published by the National Fire Protection Association and clarify existing technical requirements. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing chapter Comm 16. The proposed rules will not create any additional workload costs; therefore, they will not have any fiscal effect on the division.

The proposed rules will not have a fiscal effect on other state agencies or local governments.

The proposed adoption of 2008 NEC will require the installation of tamper-resistant receptacles and arc-fault circuit-interrupter protection in all new dwelling construction. Tamper-proof receptacles cost an additional 50 cents or about 80 to 90 cents each. An average dwelling has about 80 receptacles, so the additional cost to install tamper-resistant receptacles would be \$40 per dwelling. The additional cost for each arc-fault circuit-interrupter unit is \$35 and the number to be installed varies per building. On the average, approximately five arc-fault circuit-interrupters are needed for a dwelling for a total cost of \$175. The estimated cost to install tamper-resistant receptacles and arc-fault circuit-interrupters in an average dwelling would be \$215. Labor costs are not affected by the proposal.

#### **State fiscal effect**

None.

#### **Local fiscal effect**

None.

#### **Fund sources affected**

PRO.

#### **Long-range fiscal implications**

None known.

### **Commerce**

#### **Uniform Dwelling Code, Chs. Comm 20–25 CR 08–043**

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74, Stats., the Department of Commerce will hold a public hearing on proposed rules under chapters Comm 20 to 25 relating to the Uniform (1–2 Family) Dwelling Code.

### **Hearing Information**

The public hearing will be held as follows:

<b><u>Date and Time:</u></b>	<b><u>Location:</u></b>
<b>June 19, 2008</b>	Thompson Commerce Building
Thursday	Third Floor Conference Rm. #3B
10:30 a.m.	201 W. Washington Avenue
	Madison, Wisconsin

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape

format will, to the fullest extent possible, be made available upon a request from a person with a disability.

### **Submission of Written Comments**

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **July 7, 2008**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Duane Hubeler, at the Department of Commerce, P.O. Box 2658, Madison, WI 53701–2658, or Email at [duane.hubeler@wisconsin.gov](mailto:duane.hubeler@wisconsin.gov)

### **Copies of Proposed Rules**

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

### **Agency Contact Person**

Duane Hubeler, UDC Consultant, [duane.hubeler@wi.gov](mailto:duane.hubeler@wi.gov), (608) 266–1390

### **Small Business Regulatory Coordinator**

Carol Dunn, at (608) 267–0297, or Email at [carol.dunn@wisconsin.gov](mailto:carol.dunn@wisconsin.gov).

### **Analysis Prepared by Department of Commerce**

#### **Statutes interpreted**

Sections 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74, Stats.

#### **Statutory authority**

Sections 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74, Stats.

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

Sections 101.63 (5) and 101.73 (8), Stats.

#### **Explanation of agency authority**

Under the statute sections listed above, the Department of Commerce has the responsibility to adopt rules that establish uniform, statewide standards for the construction of 1- and 2-family dwellings. This code, in its entirety, first went into effect in 1980. Sections 101.63 (5) and 101.73 (8), Stats., require the department to review these rules on a biennial basis.

#### **Summary of proposed rules**

The vast majority of these proposed rule changes are intended to clarify current policies and requirements. The substantial changes to the code are as follows:

- Sections Comm 20.02 (1), 20.09 and 20.10 relating to scope of the code, permit issuance and inspections, respectively, have been reformatted and expanded.
- Section Comm 20.24 on adopted national standards is updated to include the latest editions. One standard on duct construction is dropped and two new ones on fire sprinkler construction and log home construction are added.

- Section Comm 21.24 (4) has new requirements for water-resistive barriers under the exterior covering of the dwelling.
- Section Comm 21.25 (7) has new requirements for the construction of short “cripple walls” on top of foundation walls.
- Sections Comm 21.25 (8) and (9) has new requirements for wind bracing of wood frame walls that bring the Wisconsin requirements in line with national standards.
- Chapter Comm 22, containing the energy conservation requirements, is repealed and recreated to bring the Wisconsin requirements in line with the national model energy code. There are new prescriptive component requirements as an alternative to the traditional total envelope heat loss requirements.

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

There appear to be no federal regulations governing general one- and 2-family dwelling construction.

#### ***Comparison with rules in adjacent states***

An internet search of the State of Illinois’ website did not reveal the existence of a statewide one- and 2-family dwelling code. Dwelling regulation appears to be left up to the individual local units of government.

An internet search of the State of Iowa’s website did not reveal the existence of a statewide one- and 2-family dwelling code. Dwelling regulation appears to be left up to the individual local units of government.

An internet search of the State of Michigan’s website showed a mandatory, statewide one- and 2-family dwelling code. The Residential Construction Code under the Construction Code Commission General Rules, section 408.305, contains the state amendments to the 2006 International Residential Code (IRC) developed by the International Code Council (ICC). There is a separate energy code.

An internet search of the State of Minnesota’s website showed a mandatory, statewide one- and 2-family dwelling code. Minnesota Department of Labor and Industry, Chapter 1309 adopts the 2006 International Residential Code (IRC), chapters 2-10 and 43. Chapters 2-10 contain the general construction provisions of the IRC. Separate state codes apply to the energy, mechanical, plumbing, electrical and flood protection provisions of dwelling construction.

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

The department received input at regular quarterly meetings during the entire development cycle from the Uniform Dwelling Code Council. The makeup of this Council is set under s. 15.157 (3), Stats. The members are appointed by the Governor’s Office. The Council’s composition reflects a variety of organizations whose members include many types of small businesses. Through this Council, the department is able to gather information on the potential impacts of the administrative and technical requirements of the code.

For the majority of this development cycle, the UDC Council was comprised of:

Allan Bachmann, Madison, Bachmann Construction;  
 Jeffrey Bechard, Eau Claire, Sheet metal Workers Local 18;  
 Ken Dentice, City of La Crosse Building Inspection;  
 David Dolan-Wallace, Green Bay, Martinson Architects;  
 Tom Doleschy, Muskego, Chicago Regional Council of Carpenters;

Dan Gorski, Madison, Veridian Homes;  
 Robert Jakel, City of Kaukauna;  
 Steven Levine, Madison, Wisconsin Public Service Commission;  
 Mike Mueller, Milwaukee, International Brotherhood of Electrical Workers Local 494;  
 Daniel Nowak, City of Oak Creek Building Inspection;  
 Frank Opatik, Wausau, Wausau Homes;  
 Tom Palecek, Marshfield, Wick Building Systems;  
 Gary Ruhl, Oshkosh, NE Wisconsin Building & Construction Trades Council;  
 Mary Schroeder, Brookfield, Miller Homes;  
 Katy Stadtherr, City of Green Bay Building Inspection;  
 John Vande Castle, Fond du Lac, Fond du Lac Mosaic Tile Company, Inc.; and  
 Mike Wallace, City of Hudson Building Inspection

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

These proposed rules do not significantly impact small businesses. The proposed rules do adopt more current technical design and construction standards used by designers and various tradespersons but those standards do not have a significant impact. The proposed rules do enhance the wind bracing requirements resulting in increase material and labor costs that would be passed on to the consumer. The design, material, and labor costs for the proposed specified methods of wind bracing are estimated to be \$360 or 0.15% for an 1800 square foot, two-story home valued at \$250,000 and \$100 or 0.06% for a 1200 square foot, single story home valued at \$180,000. The proposed rules will add an additional insulation requirement beneath a heated slab in contact with earth regardless of the depth below grade. Such heated slabs are allowed but not required by the code. For those homes that utilize this heated slab construction the added cost would be in the range of \$.75 per square foot. For an 1800 square foot, two-story home with a 900 square feet heated basement floor the cost increase would be \$675, or three tenths of one percent for a home valued at \$250,000.

#### ***Initial Regulatory Flexibility Analysis***

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

Contractors, tradespeople, material suppliers, and other small businesses have been affected by the Uniform Dwelling Code since its inception in 1980 and will be affected by the proposed rules.

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

None

##### ***Types of professional skills necessary for compliance with the rules***

There are no additional skills necessary to comply with these rules.

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

No.

#### ***Environmental Analysis***

NOTICE IS HEREBY GIVEN that the Department has prepared a preliminary Environmental Assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:



Duane Hubeler  
 Division of Safety & Buildings  
 P.O. Box 2658  
 Madison, WI 53701  
 Phone: (608) 266-1390  
 or TTY (608) 264-8777

Written comments will be accepted until July 7, 2008.

**Fiscal Estimate**

**Summary**

The proposed rules update provisions for the Uniform Dwelling Code, chapters Comm 20-25. The Uniform Dwelling Code establishes uniform, statewide standards for the design and construction of one- and 2- family dwellings. The vast majority of the proposed revisions involve technical issues with the revisions intended to clarify current policies and requirements. The current administration and enforcement aspects of the code are not proposed to be significantly altered and therefore it is anticipated that the revisions will not have an impact on department and local municipality resources or costs.

The proposed rules do not significantly impact small businesses. The proposed rules do adopt more current technical design and construction standards used by designers and various tradespersons but those standards do not have a significant impact.

**State fiscal effect**

None.

**Local fiscal effect**

None.

**Fund sources affected**

PRO.

**Long-range fiscal implications**

None are anticipated.

**Notice of Hearings**

**Health and Family Services**

*Health, Chs. HFS 110—  
 CR 08-036*

NOTICE IS HEREBY GIVEN that pursuant to ss. 254.20 and 254.21, Stats., and interpreting ss. 254.20 and 254.21, Stats., the Wisconsin Department of Health and Family Services will hold a public hearing on proposed rules repealing and recreating ch. HFS 159, relating to certification and training course requirements for asbestos activities.

**Hearing Information**

Date and Time	Location
<b>June 17, 2008</b> 1:00 p.m. to 3:00 p.m.	DHFS Northeast Wisconsin Regional Office Room 152B 200 N. Jefferson Street Green Bay, WI 54301
<b>June 18, 2008</b> 9:00 a.m. to 11:00 a.m.	DHFS Western Regional Office Room 123 610 Gibson Street Eau Claire, WI 54701

**June 19, 2008**

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

West Allis Public Library  
 Constitution Room  
 7421 W. National Avenue  
 West Allis, WI 53214

**June 20, 2008**

10:00 a.m. to  
12:00 p.m.

Dept. of Health and Family  
 Services  
 Room B139  
 1 W. Wilson Street  
 Madison, WI 53702

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

**Submission of Written Comments**

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

The deadline for submitting comments to the Department is 4:30 p.m. on June 30, 2008.

**Copies of Proposed Rules**

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

**Agency Contact Person**

Shelley Bruce  
 Department of Health & Family Services  
 Asbestos and Lead Section  
 1 W Wilson St, Room 137  
 PO Box 2659  
 Madison WI 53701-2659  
 Phone: 608-267-0928, or  
 608-266-1511 (TTY) if you are hearing impaired  
 Fax: 608-266-9711  
 Email: [brucesa@dhfs.state.wi.us](mailto:brucesa@dhfs.state.wi.us)

**Small Business Regulatory Coordinator**

Rosie Greer  
[Greerj@dhfs.state.wi.us](mailto:Greerj@dhfs.state.wi.us)  
 (608) 266-1279

**Analysis Prepared by the Dept. of Health and Family Services**

**Statutes interpreted**

Sections 254.20 to 254.21, Stats.

**Statutory authority**

Sections 250.04 (1) and (2), and 254.20 to 254.21, Stats.

**Explanation of agency authority**

Section 250.04 (1), Stats., gives the Department general supervision throughout the state of the health of citizens and authorizes the Department to enter and inspect private property. Section 250.04 (2), Stats., gives the Department all powers necessary to fulfill its public health duties and to bring action in the courts for the enforcement of public health statutes and rules.

Section 254.20, Stats., authorizes the Department to promulgate rules establishing certification requirements for

any person who conducts or supervises any asbestos abatement or management activity. Section 254.20 (5), Stats., authorizes the Department to promulgate rules to set certification fees.

Section 254.20 (9), Stats., authorizes the Department to promulgate any rule it deems necessary to administer the asbestos certification requirements under section 254.20, Stats.

Section 254.21, Stats., authorizes the Department to promulgate rules regulating asbestos in schools.

**Related statute or rule**

Chapter NR 447, Wis. Adm. Code, Control of Asbestos Emissions.

Chapter HFS 163, Wis. Adm. Code, Certification for the Identification, Removal and Reduction of Lead-Based Paint Hazards.

**Plain language analysis**

Chapter HFS 159 establishes certification and training accreditation requirements for persons who perform asbestos abatement or management activities. The department proposes to repeal and recreate ch. HFS 159 to achieve the following goals:

*Increase program revenues.* When chapter HFS 159 was promulgated in 1988, fees were established to implement asbestos training and certification requirements. Fees have not been adjusted since 1988 and are no longer sufficient to support the program. To provide needed program funding, the Department proposes the following additional fees:

- An increase in individual certification fees of \$25 per discipline.
- New fees for company certification – \$100 for exterior abatement companies, \$200 for other companies.
- New fees for asbestos project notification – \$50 for 2-day or more notice, \$100 for less than 2-day notice.
- New fee for principal instructor approval – \$50.
- Revised training course fees – application fee of \$200 per course training day, annual accreditation fees of \$250 per refresher course and \$900 per initial course.

*Distribute fees so that persons using more services/resources pay a greater share of program operating costs.* Fees for training courses will be assessed annually rather than once to better offset the cost of Department resources required to review and audit training programs on a regular basis. Certification and project notification fees for asbestos companies will be added so that companies share the regulatory burden with certified individuals, since companies make many of the compliance decisions for the work they perform. Company fees will help offset the cost of Department work sites inspections. More active companies will pay a greater share of notification fees than less active companies.

*Increase options and flexibility for individuals and companies.* The proposed rule would:

- Allow an individual to work with provisional certification after the individual has completed training and submitted a certification application.
- Reduce initial training and certification requirements for exterior supervisors from 5 days to 2 days and for exterior workers from 4 days to 1 day.
- Reduce annual refresher training requirements for exterior supervisors from 4 hours to 2 hours and for exterior workers from 4 hours of training from an accredited training provider to a requirement for annual

update training that may be provided by the employer or other provider.

- Shorten the project notification requirement from 10 days prior notice to 2 days or less notice.
- Limit the types of projects for which the Department must be notified to generally projects for which notification to the WI-DNR under ch. NR 447 is not required.

*Reduce paperwork.* Under most circumstances, the proposed rule eliminates the current requirement that a company submit asbestos project notifications to both DHFS and DNR, as the company would only submit notification to one agency depending on the size or type of project.

*Better protect employees and building occupants.* The proposed rule would require persons be certified before conducting regulated asbestos work in any structure except the person's own single-family house. This would better protect both workers and occupants of small rental apartment buildings, because the current rule allows an owner to use untrained, uncertified employees to do asbestos work in residential buildings with fewer than 10 units, and this work poses a substantial risk that the workers will be exposed to asbestos and buildings in which others live will be contaminated.

In addition, the proposed rules would require an abatement company to develop an occupant protection plan and post it onsite whenever conducting abatement in an occupied building. The plan would outline the measures the company would take to ensure proper containment of asbestos during the abatement project. This would help occupants determine if the contractor was working safely and following the plan.

*Assist schools in complying with federal AHERA regulations.* The proposed rule would require a school to annually submit contact information for its designated asbestos coordinators (required under EPA regulations) to facilitate better communication between the school and the Department regarding asbestos issues.

*Improve worker compliance options and safeguards.* The proposed rule would require training course providers to collect additional identifying information on students attending training courses. Specifically, training providers would be required to review student ID's, take and print student photos on training certificates, and electronically submit student photos and class training rosters to the Department. This will ensure that the person who attends training is the same person who applies for and receives certification from the department.

Individuals entering Wisconsin from other states would be required to take an initial or refresher training course in Wisconsin to qualify for Wisconsin certification. This would help control individuals who come into Wisconsin and attempt to perform regulated asbestos work without proper training based on falsified or unreliable training documents. The Department has encountered several individuals with out-of-state training certificates for English language courses, who did not speak English well enough to have understood the training they took. Wisconsin has accredited asbestos worker training courses in both English and Spanish.

The proposed rule would also require that an individual conducting regulated asbestos work be associated with a certified asbestos company. The certified company would be responsible for ensuring proper certification of individuals conducting asbestos work for it, properly supervising its asbestos abatement work sites, notifying the Department of its regulated abatement activities, and maintaining records of its regulated asbestos activities. Enforcement actions could be

taken against the company for failure to ensure compliance with these requirements.

**Comparison with federal regulations**

The Federal Asbestos Hazard Emergency Response Act (AHERA), signed into law in 1986 as Title II of the Toxic Substances Control Act (TSCA), establishes rules and guidance for the management of asbestos-containing materials in schools, grades K–12. To accomplish this, AHERA:

- Promulgates regulations providing the framework for addressing asbestos hazards in schools.
- Directs K–12 schools to conduct asbestos inspections, develop management plans for asbestos in their schools and conduct asbestos response actions in a timely manner.
- Directs states to develop accreditation and certification programs for inspectors, management planners, project designers and abatement contractors based on EPA’s model accreditation plan.

In 1987, the EPA published the Asbestos Containing Materials in Schools regulation, 40 CFR Part 763, Subpart E, to implement the provisions of AHERA. The Asbestos School Hazard Abatement Reauthorization Act (ASHARA) of 1992 extended the AHERA regulations to other public and commercial buildings, including multi–family residences. Subsequent revisions to Subpart E made in 1994 created Appendix C, the Asbestos Model Accreditation Plan, including the requirements under which EPA approved state asbestos accreditation and certification programs. Appendix C to Subpart E established federal training and certification requirements for persons conducting asbestos abatement and management activities in buildings, and the minimum training course requirements for five disciplines: asbestos supervisor, asbestos worker, asbestos inspector, asbestos management planner and asbestos project designer. The Department is approved by EPA to administer Wisconsin’s asbestos certification and training accreditation program under Appendix C in lieu of EPA administering the federal program in Wisconsin.

The following additional federal EPA regulations also apply to asbestos work:

– 40 CFR 763, Subpart G, asbestos worker protection for public employees.

– 40 CFR 61, Subpart M, National Emission Standards For Hazardous Air Pollutants (NESHAP). The Department of Natural Resources administers the EPA–delegated NESHAP program in Wisconsin.

The following federal OSHA regulations apply to asbestos work:

– 29 CFR 1910, which provides standards for asbestos work in general industry.

– 29 CFR 1926.1101, which provides standards for asbestos work in construction.

**Comparison with rules in adjacent states**

*Comparison States:* Illinois, Iowa, Michigan, Minnesota and Ohio. Wisconsin is located in EPA Region 5 along with Illinois, Indiana, Michigan, Minnesota and Ohio. Since Ohio has a more recently revised asbestos rule than any of the adjacent states, it has been included in this comparison.

*Comparison of Certification and Accreditation:* All of the comparison states require certification of asbestos companies and individual certifications for asbestos worker, asbestos supervisor, asbestos inspector, asbestos management planner (except Ohio) and asbestos project designer disciplines. Some states certify additional disciplines, such as asbestos project manager (Illinois), and asbestos air sampler (Illinois, Ohio). Wisconsin currently certifies asbestos roofing supervisors and workers, which none of the other states do, and proposes replacing these disciplines with exterior supervisor and exterior worker disciplines.

All the comparison states, except Iowa, approve and accredit asbestos training courses and charge application and annual course accreditation fees to training providers. All of the comparison states, except Iowa, charge annual fees for accrediting training courses.

*Certification and Accreditation Fee Comparisons:* All of the comparison states charge annual fees for certifying companies and individuals conducting asbestos work. All, except Iowa, charge annual fees for accrediting training courses. Wisconsin’s current rule requires only a one–time accreditation fee for training courses (\$750 for initial and \$250 for refresher). See Table 1 below for state comparisons.

**Table 1: Comparison of State Fees**

States	Iowa	Illinois	Minnesota	Michigan	Ohio	Wisconsin
Regulation	Ch. 155, IAC	77 IAC Part 855	MR Ch. 4620.3000–3724	Act 135 of 1986 s. 338.3101–3319 Act 440 of 1988 s. 338.3401–3418	OAC Ch. 3701–34	Ch. HFS 159, WAC
Year current fees were established:	<b>1988</b>	<b>1988</b>	<b>1988</b>	<b>1996</b>	<b>2004</b>	<b>Proposed</b>
<b>Asbestos Companies – all types</b>	<b>Annual Fees</b>					
	\$500	\$750	\$100	\$200 (1–4 emps) \$400 (5+ emps)	\$750	\$100 (ext. co.) \$200 (all others)

**Table 1: Comparison of State Fees – Continued**

Individual Disciplines		Annual Fees				
Asbestos Inspector – Initial/Renewal	\$20	\$50	\$100	\$150 / \$75	\$200	\$175
Asbestos Management Planner – Initial/Renewal	\$20	\$50	\$100	\$150 / \$75	NA	\$125
Asbestos Project Designer – Initial/Renewal	\$50	\$50	\$100	\$150 / \$75	\$200	\$175
Asbestos Supervisor – Initial/Renewal	\$50	\$75	\$50	\$50 / \$25	\$200	\$125
Asbestos Worker – Initial/Renewal	\$20	\$25	\$50	\$50 / \$25	\$50	\$75
Replacement cards	\$10	\$15	\$25	\$25	\$20–\$200	\$25
Course Application		Initial Fees				
Initial courses	NA	\$500	\$500	\$400	\$900	\$200–\$1,000
Refresher courses	NA	\$500	\$500	\$400	\$300	\$200
Course Accreditation – Annual		Annual Fees				
Initial Courses	NA	\$500	\$250	\$200	\$900	\$900
Refresher Courses	NA	\$500	\$250	\$200	\$300	\$250
Project Notification		Per Project Fees				
Asbestos Projects	NA	\$150 or \$300	1% of project cost or \$35 if small project	1% of project cost	\$65–\$75 or more	\$50–\$100

*Illinois:* Title 77 Illinois Administrative Code, Part 855, “Asbestos Abatement For Public and Private Schools and Commercial and Public Buildings In Illinois” –

- Illinois EPA requires 2 days notice for projects removing more than 160 square feet, 260 linear feet or 35 cubic feet of asbestos and charges a \$150 notification fee and \$300 for late notices.
- Requires training and certification for a person before performing asbestos abatement of amounts of asbestos in excess of 3 square feet or 3 linear feet on the interior of commercial or public buildings, excluding residential buildings of fewer than 10 units.
- Certifies additional disciplines of asbestos project manager and asbestos air sampler.
- Imposes experience requirements for certifications in all disciplines except asbestos worker.
- Requires certification for companies removing, enclosing or encapsulating friable asbestos containing building material in school, public or commercial buildings.
- Requires applicants for asbestos company certification to carry a minimum of \$1,000,000 liability insurance from an A-rated insurer, to have a designated certified supervisor, and to submit project information including standard operating procedures and employee protection plans.
- Requires certification for additional disciplines of Air Monitor and Project Manager.
- When renewal applications are received after the certification expiration date, charges the initial fee for the discipline plus a reinstatement fee that is double the certification fee (i.e., \$50 worker fee plus \$100 reinstatement fee) for reinstatement.
- Requires a person to retake the initial training course for the discipline if the person’s training certificate has been expired for more than one year without the person taking the required refresher.

*Iowa:* Ch. 155, Iowa Administrative Code –

- Iowa DNR requires 10 days notice but does not charge a notification fee.
- Regulates the removal or disturbance of asbestos that is friable or becomes friable (no minimum amount provided); does not differentiate between interior and exterior asbestos work.
- Requires asbestos company certification if company conducts asbestos work for compensation.
- Does not require certification for employees of companies that only conduct asbestos work in their own facilities, but does require training and compliance with regulations.
- Requires training and certification for a person to conduct regulated asbestos work on schools, public and commercial buildings, except for residential buildings of fewer than 10 units.
- Requires applicants for asbestos company certification to submit a description of personal protection activities.

*Michigan:* Act 135 of 1986, s. 338.3101–3319 and Act 440 of 1988, s. 338.3401–3418 –

- Michigan Dept. of Labor and Economic Growth requires 10 days notice for projects removing in excess of 10 linear feet or 15 square feet and charges a notification fee that is 1% of project cost.
- Requires training and certification for a person to perform asbestos demolition, renovation or encapsulation of friable asbestos materials on the premises of another entity.
- Requires asbestos company certification for companies that remove or encapsulate friable asbestos for another entity.
- Requires applicants for asbestos company certification to submit proof of workers’ compensation insurance and a statement of whether they carry liability insurance.
- Requires post-abatement air monitoring checks performed by a neutral party and a clearance level not exceeding 0.05 fibers per cubic centimeter at all asbestos

abatement sites where there was a negative pressure enclosure involving 10 linear feet or 15 square feet or more of friable asbestos.

- Imposes experience requirements for persons applying for asbestos management planner, project designer and inspector certifications.
- Charges the initial certification fees for renewal applications received after the certification expiration date; otherwise charges renewal fees equal to one half the initial certification fees.

**Minnesota:** MR Ch. 4620.3000–3724 –

- Minnesota Dept. of Health requires 5 days notice and charges 1% of the asbestos contract total or \$35 for small residential projects. Minnesota also requires individual notifications as soon as possible before the beginning of each portion of a project covered under a 1–year blanket notice where asbestos removal over the course of the year is expected to exceed 160 square feet or 260 linear feet.
- Requires training and certification for a person to perform asbestos work involving friable asbestos–containing material in amounts over 160 square feet, 260 linear feet or 35 cubic feet, or to perform asbestos work in residential buildings of 4 or fewer units involving friable asbestos–containing material over 6 square feet, 10 linear feet or 1 cubic foot.
- Requires applicants for asbestos company certification to submit proof of workers’ compensation insurance, to have a responsible person who is a certified supervisor, and to have a Minnesota business identification number.
- Requires completion of a Minnesota–accredited training course (initial or refresher) before a person may be certified to conduct asbestos work in Minnesota.
- Establishes experience and/or education requirements for all disciplines.
- Requires an applicant to retake initial training when the renewal application is received after the certification expiration date.
- Requires compliance with detailed work practice standards.
- Requires indoor air monitoring and clearance air sampling for all interior asbestos projects.
- Allows asbestos supervisors or workers to conduct air monitoring.

**Ohio:** OAC Ch. 3701–34 –

- Ohio Dept. of Health requires 10 days notice and charges \$65 per notice. The Ohio EPA charges \$75 per notice plus an additional \$3 per every 50 square feet or linear feet of

asbestos removed or an additional \$4 for every cubic yard of asbestos removed.

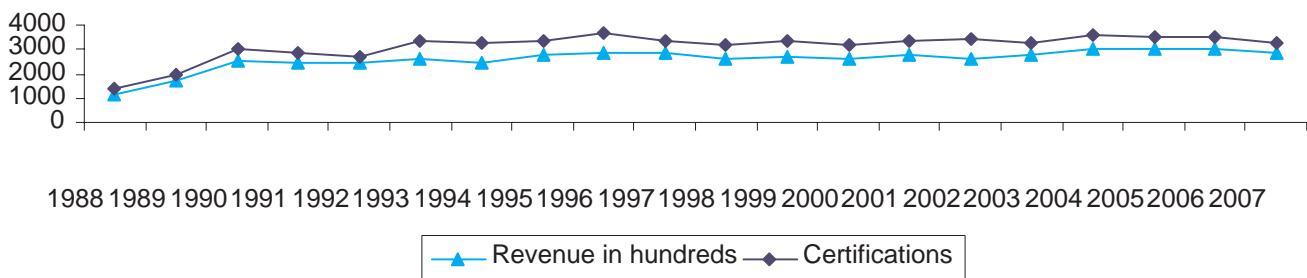
- Requires training and certification for persons to perform asbestos work involving the removal, renovation, enclosure, repair or encapsulation of greater than 50 linear feet or 50 square feet of friable asbestos–containing material.
- Requires an applicant for asbestos company certification to be a state–registered business.
- Requires an applicant for asbestos company certification to submit a description of personal protective equipment and clothing it will use, procedures for safely handling and disposing of the protective equipment and clothing to prevent contamination, and work practice procedures for hazard reduction, site decontamination, air monitoring, waste handling and final clean–up.
- Requires an asbestos company to employ a certified asbestos specialist (supervisor).
- Requires a certified abatement air monitoring technician to conduct air clearance following abatement, but allows asbestos inspectors to take air samples.

**Summary of factual data and analytical methodologies**

The Department conducted an analysis using Department data to determine the fiscal status of the asbestos certification program. Initially, the Department reviewed North American Industry Classification System (NAICS) data, but this data grossly underestimated the number of companies involved with asbestos remediation in Wisconsin. Therefore, the Department analyzed data in the WI Asbestos and Lead Database Online (WALDO) to determine and compare, by year, the numbers of initial and renewal certifications issued, revenues received, and asbestos employers in the state.

A comparison of the number of certifications processed since program inception shows that the numbers have remained relatively steady since 1993, generally fluctuating between 3,200 and 3,500. Even though there has been a small upward trend in the number of persons certified over the past several years, the higher cost disciplines (management planners and project designers) have decreased in numbers. This has resulted in flat income over the past 14 years. Fees collected from certifications have not kept pace with the 60% increase in the Midwest urban consumer price index over this time period. Beginning in State Fiscal Year 2004, asbestos program revenues have not been sufficient to cover program expenses, resulting in a program deficit. The most recent budget information available indicates that the program is operating with a deficit of approximately \$300,000. This deficit is projected to increase to nearly \$400,000 by the end of SFY08 as program expenses increase and revenues remain flat.

**Figure 1: Comparison of Number of Asbestos Certifications to Asbestos Revenue**



The Department met with asbestos companies and workers early in the rule development period to learn of each group's concerns and issues before further rule development. A public meeting for the asbestos industry was held on May 5, 2004 to solicit comments on the proposed rule. On July 1, 2004, Department staff met with asbestos training providers to discuss proposed changes. Information about the effect of the proposed rule changes on schools was e-mailed to certified school staff, CESA directors, and school associations on July 26, 2004 and their input was solicited. Department staff met with the roofing contractors on September 30, 2004, to discuss issues affecting them. Additionally, at the 2004 and 2005 fall statewide asbestos conferences, Department staff presented information about asbestos rule changes and solicited additional comments. Each meeting led to significant revisions to the proposed rule and consensus with the affected entities regarding the provisions and fees in the draft rule.

Pursuant to the Department's criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index (CPI) or reduces revenues by more than the prior year's CPI. For the purposes of this analysis, we used 2006 as the index year; the 2006 CPI was 3.2%.

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

*Entities affected:* The entities affected by the repeal and recreation of Ch. HFS 159, Wis. Adm. Code, include:

- Entities engaged in asbestos-regulated activities: (Source: WALDO)
  - Total number of entities directly regulated: 2,340 (includes abatement contractors, roofing contractors, asbestos consultants, non-asbestos businesses with certified staff, K-12 schools, government agencies, universities, and asbestos training providers)
  - Total small business entities directly regulated: 800 +
  - Total non-profit organizations (including colleges, trade unions, etc.): 40
- Number of certified individuals: 3,300 (Source: WALDO)
- Number of people: 5,563,896 Wisconsin residents, including approx. 950,000 school age children are affected because of the pervasive presence of asbestos in buildings, schools and other structures. (Source: WisStat online)
- School districts/schools: (Source: DPI. All public and private not-for-profit K-12 schools are required to comply with the EPA AHERA regulations)
  - Public K-12 School Districts: 426
  - Private K-12 Schools: 968

*Regulatory Costs:*

*Capital Costs:* None. The proposed regulations would not require any capital cost expenditures.

*Operational Costs:* None. No additional operational costs would be expected.

*Ongoing transaction costs:* Company certification fees would be \$200 per year for an asbestos company and \$100 for an exterior-only asbestos company. Because high

certification fees would place a greater financial burden on small businesses, the Department chose not to impose the higher company certification fees set by some other states. (See Table 1) Rather, to generate needed program revenues, the Department coupled lower company certification fees with a modest \$50 asbestos project notification fee. Since notification fees are paid to the Department only when an asbestos project is scheduled, those companies that do more regulated asbestos work will share a greater portion of the regulatory costs. No loss of business is expected because of this additional fee.

Individual certification fees for the seven asbestos disciplines would increase modestly. While businesses may pay for their employees' certifications, they are not required to do so.

Fees for training courses would include annual accreditation fees of \$250 for a refresher course and \$900 for an initial course and initial application fees for course accreditation ("start-up costs") ranging from \$200 to \$1,000, based on course length. The initial course application fees would help cover the Department's cost of conducting the in-depth review of course curriculum materials needed to determine compliance with code requirements. Training providers with courses accredited under the current rule would not be required to pay the initial course application fees, but course accreditation renewal fees for their courses would be due one year after the publication date of the rule.

*Barriers to Entry and Expansion:* The Department does not expect the proposed rules to add barriers to entry into the asbestos remediation industry. The cost of company initial certification has been kept low (\$100-\$200) in order not to overburden small or start-up companies. Project notification fees are also modest at \$50 when a 2-day advance notice is given. Training course fees are higher because more resources are required to review and approve the courses and conduct onsite course audits to determine if each training course meets regulatory standards.

*Employment Effects:* No detrimental or adverse effects on employment within the affected regulated entities are expected.

*Summarizing Aggregate Costs:*

*Costs to the Department:* No additional FTE, supply, travel or training costs are expected. A one-time approx. \$20,000 cost will be required to upgrade the electronic database platform to handle new disciplines, fee changes and company certification.

The current asbestos program has operated under the same fee structure, without change, for 20 years. The costs of administering the program now exceed income.

*Costs to business:* Under the current rule, certified individuals bear most of the regulatory costs, with individual certifications making up 99.4% of the annual asbestos revenue collected by the Department. The proposed rule would spread these costs more evenly among all regulated sectors of the industry, increasing the share of costs borne by asbestos companies and training providers. Businesses (contractors, consultants and training providers) would pay 33% of overall regulatory costs, while individuals would pay 67% of costs. The average additional annual expense for businesses would be approximately \$510, most of which could be passed along to their customers. Less active businesses would share a lesser amount of annual expenses because they would pay for fewer notices to the Department.

**Table 3: Aggregate Annual Costs for Asbestos Businesses and Certified Individuals**

Fee:	Cost Distribution under Proposed Rule		Cost Distribution under Current Rule	
	# Units x Cost	Total	# Units x Cost	Total
<b>Company certification fees</b>	250 x \$200	\$ 50,000		\$ N/A
Exterior company certification fees	75 x \$100	7,500		N/A
Project notification fees with 2-day notice	1,500 x \$50	75,000		N/A
Project notification fees with 1-day notice	200 x \$100	20,000		N/A
Sub-Total		\$ 152,500		\$ 0
<b>Individual annual certification fees*</b>				
Asbestos Worker	675 x \$75	\$ 50,625	675 x \$50	\$ 3,750
Asbestos Supervisor	1,300 x \$125	162,500	1,300 x \$100	130,000
Exterior Worker (1-time fee**)	450 x \$125	56,250	450 x \$25/yr.	11,250
Exterior Supervisor	150 x \$75	11,250	150 x \$50	7,500
Asbestos Inspector	575 x \$175	100,625	575 x \$150	86,250
Asbestos Management Planner	75 x \$125	9,375	75 x \$100	7,500
Asbestos Project Designer	75 x \$175	13,125	75 x \$150	11,250
Sub-Total		\$ 403,750		\$ 287,500
<b>Training Provider fees</b>				
Annual accreditation fee – initial	31 x \$900	\$ 27,900		N/A
Annual accreditation fee – refresher	22 x \$250	5,500		N/A
Sub-Total		\$ 33,400		\$ 0
<b>Instructor approval fees</b>				
Sub-Total	25 x \$50	\$ 1,250		N/A
<b>Total annualized costs</b>		<b>\$ 590,900</b>	<b>\$ 287,500</b>	

\* Numbers based on 2007 numbers of certified persons, training courses and instructors and active companies based on notices received. Exterior Worker/Supervisor certification numbers are based on current Roofing Worker/Supervisor certification numbers.

\*\* The Exterior Worker has a 1-time non-expiring certification. Annual certification numbers would drop significantly after the first year.

*Evaluating the Overall Regulatory Impacts:*

The benefit of an effective regulatory program is better compliance by companies and individuals, and better assurance that public health is protected because workers use safe work practices that protect themselves and others. The costs of regulating such an industry are borne by that industry and those who use their specialized services. The end result is that hazardous asbestos work is conducted by trained and certified persons working for certified companies, the environment is protected, and public health is protected.

The chief benefit of ensuring compliant, high quality training courses is that workers acquire the knowledge and skills required to use safe work practices and to comply with the various state and federal regulatory requirements. In addition, asbestos training providers are assured of a limited field of market competition because their courses are regulated and providers without approved courses may not offer asbestos courses required for certification.

The consequences if asbestos work were not regulated would be a higher rate of asbestos-related diseases and deaths, particularly among people who do building renovation and demolition work. Overall, healthcare costs and hospitalization would rise and worker productivity would decline due to increased incidence of asbestos-related diseases.

**Initial Regulatory Flexibility Analysis**

*Types of small businesses affected by the rule:*

Asbestos abatement contractors, exterior abatement contractors, asbestos management and consulting companies, and asbestos training providers, small businesses that disturb or remove asbestos in the course of doing business.

**Reporting, bookkeeping and other procedures required for compliance with proposed rule:**

No new reporting or bookkeeping are required under the proposed rule. New procedures required of abatement contractors and others who disturb asbestos include creation and maintenance of occupant protection plans for work in occupied buildings, project logs for each regulated project, and training records for exterior asbestos workers. New procedures required of asbestos training providers include examination and documentation of student identification records, photographing each student and submitting the photos electronically to the Department, submittal of class and student data for each class to the Department.

**Professional skills necessary for compliance with the proposed rule:**

Training providers must be competent with basic functions of electronic submittal of various types of files using email and use of an online data entry program to submit course notifications. Other businesses would also benefit from computer and internet skills for submitting applications and notifications, but these skills are not mandatory.

**Fiscal Estimate**

Since 1988 when asbestos program fees were established in statute and rule, program costs have increased annually due to inflation with no subsequent revision in fees. Revenue from current fees is no longer sufficient to cover operating expenses. To meet current costs, the Department is proposing to revise and increase fees as follows:

- Asbestos worker certification – increase from \$50 to \$75
- Asbestos supervisor certification – increase from \$100 to \$125

- Asbestos inspector certification – increase from \$150 to \$175
- Asbestos management planner certification – increase from \$100 to \$125
- Asbestos project designer certification – increase from \$150 to 175
- Exterior asbestos worker (was roofing worker) – increase from \$25 to a one-time fee of \$125
- Exterior asbestos supervisor (was roofing supervisor) – increase from \$50 to \$75
- Asbestos company certification – new fees of \$200 for asbestos company (including abatement, consulting and training provider companies) and \$100 for exterior asbestos company
- Training course application – new one-time fee of \$200 per day of training (ranges from \$200 to \$1,000)
- Initial training course accreditation – change from one-time fee of \$750 to annual fee of \$900
- Refresher training course accreditation – change from one-time fee of \$250 to annual fee of \$250
- Instructor approval – new annual fee of \$50
- Asbestos project notification – new fees of \$50 with 2 days or more notice or \$100 for less than 2 days notice
- Replacement card for lost or damaged certification card – increase from \$8 to \$25
- Handling of incomplete applications – new \$25 fee
- Training course audit when a third audit is needed to verify correction of course deficiencies identified on 2 previous audits of the same course – audit fee includes the actual cost of conducting the audit, including staff time and travel expenses.

The Asbestos Certification Program has been operating in deficit since SFY04 with a projected deficit total of \$341,242 by the end of SFY08. This deficit will continue to increase until a fee increase is in place. The proposed fee increase is expected to eliminate the deficit within five to six years after implementation. The net effect of this rule would be to provide sufficient revenue for the asbestos certification program to operate for the next five to seven years.

The proposed fee structure spreads expenses more evenly among entities regulated by the rule. Currently, individual certification fees make up 99% of program revenue. Under the proposed rule, individuals would continue to account for the majority of revenue, at 68%. Companies (abatement, consulting, exterior abatement, training providers and non-asbestos companies with in-house certified staff) would cover the remaining 32% of fees. Companies conducting more asbestos abatement projects would pay proportionately more in fees than companies doing fewer projects because they would pay more notification fees.

Under the proposed fee structure, it is estimated that individual certification fees in the first full year would be about \$403,000, company certification fees would be about \$153,000, and course accreditation fees would be about \$36,000. The projected average annual cost to a small business conducting asbestos abatement would be \$1,150 (for company certification and project notification fees, which are paid only when a company conducts asbestos abatement and can be passed on to the client); for a small business conducting asbestos consulting the annual cost would be \$200 (for company certification only); and, for a small business conducting exterior-only abatement the average annual cost would be about \$300 (for company certification and project

notifications). For a training course, the annual cost to the training provider would be \$1,150 to maintain accreditation of both the initial and refresher course in a discipline.

It is expected that state government would have some increased costs, but no additional FTE's, to process company certifications and the additional certification and notification fees. No fiscal impact is expected on local government agencies. The overall fiscal effect on small businesses is expected to be minimal or indeterminate.

## **Notice of Hearings Health and Family Services**

### *Health, Chs. HFS 110— CR 08–042*

NOTICE IS HEREBY GIVEN that pursuant to Sections 146.40 (5) and 227.11 (2) (a), Stats., and interpreting s. 146.40, Stats., the Wisconsin Department of Health and Family Services will hold public hearings on its proposal to repeal and recreate ch. HFS 129, relating to certification of programs for training and testing nurse assistants, home health aides, and hospice aides on the dates, times, and locations listed below.

#### **Hearing Information**

<u><b>Date and Time</b></u>	<u><b>Location</b></u>
<b>June 12, 2008</b> 9:00 AM – 11:00 AM	Wilson Street State Office Bldg. 1 West Wilson Street Room 950 A Madison, Wisconsin
<b>June 13, 2008</b> 10:00 AM – 12:00 PM	Southeastern Regional Office 819 North 6 <sup>th</sup> Street Room 40 Milwaukee, Wisconsin
<b>June 16, 2008</b> 11:00 AM – 1:00 PM	Northcentral Technical College Center for the Health Sciences Building – Auditorium 1000 West Campus Drive Wausau, Wisconsin
<b>June 17, 2008</b> 11:00 AM – 1:00 PM	Wisconsin Indianhead Technical College Room 174/176 1900 College Drive Rice Lake, Wisconsin

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

#### **Submission of Written Comments**

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

The deadline for submitting comments to the Department is 4:30 p.m. on June 24, 2008.



**Copies of Proposed Rules**

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

**Agency Contact Person**

Pat Benesh, Quality Assurance Program Spec–Senior  
Division of Quality Assurance  
1 West Wilson St. Room 1150  
Madison, WI 53701  
Phone: 608–264–9896  
Fax: 608–267–7119  
[patricia.benesh@wisconsin.gov](mailto:patricia.benesh@wisconsin.gov)

**Small Business Regulatory Coordinator**

Rosie Greer  
[Greerrj@dhfs.state.wi.us](mailto:Greerrj@dhfs.state.wi.us)  
(608) 266–1279

**Analysis Prepared by the Department of Health and Family Services****Statute interpreted**

Section 146.40, Stats.

**Statutory authority**

Sections 146.40 (5) and 227.11 (2) (a), Stats.

**Explanation of agency authority**

Sections 146.40 (5) and 227.11 (2) (a), Stats.

**Related statute or rule**

Sections 146.40, 50.03, 50.49 and 50.91. Stats., and chs. HFS 131, 132 and 133.

**Plain language analysis**

Chapter HFS 129 establishes conditions for certification of instructional programs, including standards for instructors, curriculum, and criteria for the competency evaluation programs for persons who work as nurse aides in hospitals, nursing homes, facilities for the developmentally disabled, home health agencies or hospices. HFS 129 also establishes standards for the development of a registry of persons who have satisfactorily completed the training and competency program or who otherwise are eligible for listing in the registry. Through this rulemaking order, the Department proposes to repeal and re–create ch. HFS 129, relating to the certification of programs and requirements for training and testing of nurse aides for the following reasons:

1. To reflect the Department’s decision to standardize the administration and operation of nurse aide training and competency evaluation statewide by contracting for this service. Federal regulations set forth under CFR 483.152 and 483.154 authorize states to choose to offer a nurse aide training and competency evaluation program. The Department has been reviewing, and approving or disapproving nurse aide training and competency evaluation programs based on standards in s. HFS 129.08.

However, the Department believes that specifying standards for competency evaluation programs cannot assure the maintenance of neutral and objective facility–sponsored instructional and competency evaluation tests that are free from possible inherent conflicts of interest posed by the need to meet facility staffing requirements. The Department proposes to modify ch. HFS 129 to reflect the Department’s contracting for such competency testing.

2. To improve the accuracy of the nurse aide registry. Under s. 146.40 (4g), Stats., and s. HFS 129.10, the

Department is required to maintain a list, known as a “registry,” of all persons deemed qualified to work in Wisconsin as a nurse aide. Aside from committing an offense that would bar a person from remaining on the list in good standing, there are currently no Wisconsin statutory provisions for removing a person’s name from the list, even though the person may no longer be available or be interested in serving as a nurse aide. The Department believes that the list of qualified nurse aides, currently numbering over 196,000, contains many persons who no longer are available or interested in working as a nurse aide. Therefore, the Department proposes to modify s. HFS 129.10 to require nurse aides to periodically update their registration information and, in the process, allow the Department to maintain a more accurate list of active nurse aides. Periodic updating will also provide the Department the opportunity to check the accuracy of the information provided by nurse aides.

3. To clarify who may be included on the registry and who is eligible to work as a nurse aide and specifically as a medication aide. The Department will also clarify the circumstances under which a person not currently included on the registry may work in a health care facility as an RN, LPN, etc.

4. To make ch. HFS 129 more consistent with current federal regulations governing nurse aides. The Department proposed to update aspects of ch. HFS 129 to reflect federal requirements established since ch. HFS 129 that was originally promulgated April 1992. Specifically, the Department will propose to incorporate federal requirements relating to:

- Withdrawal of Department approval of a nurse aide training and competency evaluation program or a nurse aide competency evaluation program if the entity providing the program refuses to permit unannounced visits by the Department.
- Nurse aide training needing to be performed by or under the general supervision of a RN who possesses a minimum of 2 years of nursing experience, at least 1 year of which must be in the provision of long term care facility services.
- The inability of a facility to charge fees for training and competency testing to a person who is employed by or has received an offer of employment from a health care facility. In addition, in the case of a person becoming employed by a federally certified nursing home within 12 months after completing training and testing program, the requirement for the Department to reimburse the person for the costs of such training and testing.
- Requiring that the skills demonstration part of the evaluation be performed in a facility or laboratory setting comparable to the setting in which the person will function as a nurse aide and be administered and evaluated by a RN with at least 1 year’s experience in providing care for the elderly or the chronically ill of any age.
- Requiring a competency testing program to use systems that prevent disclosure of both the pool of questions and the individual competency evaluations.
- Requiring that the skills demonstrated must consist of a demonstration of randomly selected items drawn from a pool consisting of the tasks generally performed by nurse aides.
- Establishing what happens if a person does not complete the evaluation satisfactorily.

5. To expand the mechanisms available to the Department for enforcing compliance of testing and evaluation programs.

Existing enforcement options in s. HFS 129.05 (2) (c) are limited to suspension or revocation of certification or imposing a plan of correction. Although these are valuable enforcement tools, they do not give the Department the flexibility it needs to tailor its response to the severity of non-compliance with this chapter. The Department proposes to revise ch. HFS 129 to include additional enforcement options such as requiring a training or competency program whose approval has been revoked to remain ineligible to submit a new nurse aide training or testing program application for a period of up to one year, issuing a statement of deficiency and placing conditions on certification. The Department will also propose additional enforcement penalties for instructors and examiners who fail to follow program requirements.

6. To include the feeding assistant training and testing program requirements. The Department proposes updating ch. HFS 129 to include reference to federal regulations set forth under 42 CFR 483.35 and 42 CFR 483.160 which authorize states to choose to offer a paid feeding assistant training and competency evaluation program or to review and approve or disapprove program application upon request. This training and testing is conducted in nursing homes or intermediate care facilities for persons with mental retardation to assist residents who have no feeding complication with eating and drinking.

7. To include the medication aide training and testing program requirements. Federal regulations set forth under 42 CFR 483.60 permit the use of unlicensed personnel, if State law permits, to administer drugs under the general supervision of a licensed nurse. This training and testing is conducted in nursing homes, technical colleges and private enterprises. The Department proposes to update ch. HFS 129 to include these medication aide requirements.

8. To increase the minimum number of hours required for nurse aide training programs from 75 to 120 hours due to the increase in the acuity level of persons receiving care by certified nurse aides. Studies completed by the federal government and other interested parties found that nurse aides need more than 75 hours of training to adequately care for today's elderly. Thirty one other States have already increased the required minimum number of hours for nurse aide training programs.

9. To include the process for requesting, reviewing and approving or disapproving waivers of Federal sanctions to training programs. The Department proposes to include reference to Public Law 105-15 (H. R. 968), revising specific provisions of the Social Security Act, which permits a State to waive the two-year prohibition of Nurse Aide training offered in, but not by certain nursing homes if the State determines there is no other such program offered within a reasonable distance of the facility, assures through an oversight effort that an adequate environment exists for operation of the program in the facility, and provides notice of such determination and assurances to the State long term care ombudsman.

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

Federal conditions of participation for the registry of nurse aides, nurse aide training and testing programs, and training of paid feeding assistants are in the Code of Federal Regulation, 42 CFR 483.150 through 483.160. These regulations establish conditions and standards for the approval of nurse aide training and competency evaluation programs, for the maintenance and operation of a nurse aide registry, and for conducting training and testing programs for

nurse aides and paid feeding assistants. State and federal regulations for registry services and training and testing of nurse aide and paid feeding assistants are comparable to one another, however the state requirements augment more general federal regulations providing specificity in certain areas. The intent of these regulations is to foster safe and adequate care and treatment of clients by these caregivers.

There are no proposed federal regulations that address the activities to be regulated by the proposed rule.

#### ***Comparison with rules in adjacent states***

*Illinois:* Illinois adopted significant portions of the federal regulation including the standards for the denial, suspension and revocation of program approval. The opportunity to appeal any adverse action taken by the State is afforded through the Illinois Departments Rules of Practice and Procedure in Administrative Hearings. In addition, the code specifies a comprehensive list of topics that must be addressed in any approved program including patient rights, communication, psychological needs of patient and family, hand washing, body mechanics, basic anatomy, nutrition, etc. Each set of topics includes course objectives and proficiency measures. Illinois code exceeds the federal minimum number of training hours and requires a minimum of 120 hours of instruction, excluding breaks, lunch and any orientation to specific policies of the employing facility. The code also establishes a minimum of 12 hours for instruction related to Alzheimer's disease and related dementias. Federal regulation requires a minimum of 75 hours for nurse aide training.

The Illinois code is 77 Admin Code 395 Long-Term Care Assistants and Aides Training Programs code.

*Iowa:* Iowa code closely mirrors the federal requirements by including standards for denial, suspension and revocation of program approval. The rule requires the same federal minimum number of hours for the training course at 75 hours. Like Illinois, Iowa code contains an extensive list of topics that must be included in any approved training program including bathing, dressing, toileting, assistance with eating, skin care, transfers, responding to behaviors, restorative care and avoiding the need for restraints. The code also includes provisions for Iowa to remove the names of certified nurse aides from the registry who have performed no nursing or nursing related services for monetary compensation for a period of 24 consecutive months unless the person's registry entry includes documented findings of conviction by a court of law of abuse, neglect, mistreatment or misappropriation of property.

The Iowa code is Iowa Code Chapter 81 - 16 Nurse Aide Requirements and Training and Testing Program.

*Michigan:* Michigan has no state rule regarding certified nurse aide training programs or maintenance of a registry and relies solely on federal regulation.

*Minnesota:* Minnesota has no state rule regarding certified nurse aide training programs or maintenance of a registry and relies solely on federal regulation.

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

The Department relied on all of the following sources to draft the proposed rule and to determine the impact on small businesses.

- The Department formed an advisory committee consisting of Department staff, and staff from the Department of Workforce Development, the Department of Public Education, the Wisconsin Association of Homes and Services for the Aging, the Wisconsin Health and Hospital Association, the Wisconsin Health Care

Association, the Wisconsin Technical College System, the Wisconsin Long Term Care Workforce Alliance and private industry. The advisory committee reviewed the initial draft of the rule and provided comments. The rule was revised based upon the comments made by the advisory committee.

- The 2002 Economic Census – Wisconsin Geographic Series, compiled by the U.S. Census Bureau every 5 years for each year ending in “2” or “7” contains the latest available economic data compiled from businesses located in Wisconsin. The 2007 data is not yet available.
- Criteria adopted by the Department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department’s proposed rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department’s criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year’s consumer price index, or revenues are reduced by more than the prior year’s consumer price index. For the purposes of this rulemaking, 2007 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2007 is 4.2 percent.
- Section 227.114 (1) (a), Stats., defines “small business” as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.
- DHFS databases that contain demographic, licensing, program, and compliance history of nurse aide training programs and certified nurse aides in Wisconsin.

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

Nurse Aide Training and Testing programs both publicly operated and privately owned are regulated by the Department under ch. HFS 129 and ch. 146, Stats. Nurse aide training programs are not clearly defined in the North American Industry Classification System (NAICS) data, as most of these programs are a small program within the Wisconsin technical school system or housed within a nursing facility or other major health care provider. These programs are included in NAICS sector 61 Educational Services and further defined in sub-sectors; 6111 Elementary and Secondary schools, 6115 technical & trade schools, and 611699 other miscellaneous schools and instructions. Additional programs are included in sector 62, Health Care and Social Assistance and further defined in sub-sector 6231 Nursing Care Facilities. Revenue, expense, and staffing data are not available from this source as nurse aide training programs are a mere fraction of these many business sectors.

Data from DHFS data sets obtained on July 1, 2007 lists 89 nurse aide training programs. The data from July 1, 2007 is the latest complete data set available for nurse aide training programs. The type of entity and number of programs is provided in the table below.

ENTITY	NUMBER
Nursing homes	33
Wisconsin Technical Colleges	16
High schools	15
Other*	13
Hospitals	7
Facilities for the developmentally disabled	3
Universities	2
Total	89

\* Other entities include 3 non profit entities; one nurse aide training program operated by a charitable organization, one program operated by a religious organization and one program operated by the federal government. The remaining 10 entities are for profit agencies.

Based on a review of DHFS licensing data, including, financial reports submitted by the entity, Medicaid reimbursement data, number of beds and whether the entity is a part of a larger health care organization, DHFS has determined that the affected nursing homes, hospitals and facilities for the developmentally disabled are not small businesses as defined by Section 227.114 (1) (a), Stats. The technical colleges, high schools, universities and the 3 non profit entities in the Other category, that provide nurse aide training do not meet the definition of a small business either. The remaining ten nurse aide training programs in the Other category, are for profit entities. The Department is unable to obtain detailed financial data on these entities and assumes for the purpose of this analysis that they are small businesses.

**Initial Regulatory Flexibility Analysis**

Due to increase in the acuity level of person receiving care by nurse aides, the proposed rule increases the minimum number of hours required for nurse aide training programs from 75 to 120. The fiscal impact of the proposed rule includes the costs associated with providing the additional 45 hours of nurse aide training. Thirty-five of the 89 nurse aide training programs already meet or exceed this requirement. Two of the 35 training programs that meet or exceed the proposed 120 training hours are small businesses. The rule requirement will increase costs for the remaining 54 training programs. Eight of the 54 training programs are identified as small business and will need to increase training time by 24 to 40 hours to meet this standard.

It is estimated that a registered nurse certified to train nurse aides will cost between \$45 and \$100 per hour. Costs for each course will increase between \$2,025 and \$4,500 for the 45 additional hours of training required by the proposed rule. All programs currently not meeting the 120 hours standard will experience these increased costs. (It should be noted that nursing homes receive up to \$225 from the Medicaid program for each student trained by the facility.) Thirteen of the 54 programs that will need to increase the number of training hours already provide between 100 and 119 hours of trainings. Increased costs for these programs will range between \$900 and \$2,000 for each course.

The increased cost to provide training may be passed on to students by the training entity in the form of higher tuition. The increased costs to a student enrolled in a program with an average of 100 students ranges from \$9 to \$45 per student (\$900 ÷ 100 students = \$9; \$4,500 ÷ 100 students = \$45). Students who become employed by a nursing home within 12

month of completing nurse aide training are eligible for tuition reimbursement up to \$225 indirectly from the Medicaid program.

Based on available data it appears 8 of the 10 nurse aide training programs categorized as Other meet the definition of a small business and will be affected by this rule change. (As noted above, 2 training programs meeting the definition of a small business already provide 120 or more training hours.) This represents 9% of all nurse aide training programs in Wisconsin. It is anticipated that increased costs will be passed on to students in the form of higher tuition, with no significant impact on the affected entities. New training programs will be able to build the 120 hour training requirement into the business plan.

### **Fiscal Estimate**

#### ***State fiscal effect***

Two of the Wisconsin operated facilities for the developmentally disabled (FDD) provide nurse aide training. One of the facilities will need to increase their training program by 22 hours, potentially increasing costs from \$990 to \$2,200 per course. (The other facility for the developmentally disabled exceeds the 120 hour training standard.) It is assumed that existing staff will be reallocated to fulfill the increased training requirement. FDDs receive funding for nurse aide training in their Medicaid daily rate.

#### ***Local fiscal effect***

Fourteen of the 16 technical colleges already meet the proposed training requirement providing 120 or more training hours. The remaining 2 technical colleges provide 100 or more training hours. Costs may increase between \$900 and \$2,000 depending on the number of training hours each program will need to add to meet the proposed standard. For example, a technical college that offers 7 training programs each year will experience an increase of 140 training hours annually or .07 FTE. It is assumed that existing staff will be reallocated to fulfill the increased training requirement.

Training costs for high schools may increase between \$2,025 and \$4,500 depending on the number of training hours each program will need to add to meet the proposed standard. For example, a high school that offers 2 training programs each year will experience an increase of 80 training hours annually or .04 FTE. Three of the 15 high schools that provide nurse aide training already meet the proposed training requirement providing 120 or more training hours. An additional 8 high schools provide 100 or more training hours. These high schools will need to provide an additional 40 training hours (2 courses annually) or .02 FTE. It is assumed that existing staff will be reallocated to fulfill the increased training requirement.

One county operated nursing home will need to increase their training program by 42 hours; potentially increasing costs from \$1,890 to \$4,200 per course. Historically this facility has provided one nurse aide training course every 2 years. This will require .01 FTE annually to provide the increased training. It is assumed that existing staff will be reallocated to fulfill the increased training requirement. This facility is eligible to receive up to \$225 from the Medicaid program for each student trained by the facility.

## **Notice of Hearing**

### **Insurance**

#### **CR 08-032**

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41(3), Stats., and the procedures set forth in under ss. 227.18, and 227.24 (4), Stats., OCI will hold a public hearing to consider the adoption of proposed and emergency rulemaking orders affecting sections Ins 3.455, 3.46, and 3.465, Wis. Adm. Code, relating to long-term care plans including the plans qualifying for the Wisconsin long-term care insurance partnership program and affecting small business.

#### **Hearing Information**

**Date:** June 16, 2008

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

**Place:** OCI, Room 227, 125 South Webster Street,  
2<sup>nd</sup> Floor, Madison, WI

#### **Submission of Written Comments**

Written comments can be mailed to:

Julie E. Walsh

Legal Unit – OCI Rule Comment for Rule Ins 3455er  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh

Legal Unit – OCI Rule Comment for Rule Ins 3455er  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703-3474

Comments can be emailed to:

Julie E. Walsh

julie.walsh@wisconsin.gov

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

The deadline for submitting comments is 4:00 p.m. on the 7<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing.

#### **Copies of Proposed 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](mailto:inger.williams@wisconsin.gov), (608) 264-8110, 125 South Webster Street – 2<sup>nd</sup> Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

#### **Agency Contact Person**

Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)

Address: 125 South Webster Street  
2<sup>nd</sup> Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

### **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](mailto:eileen.mallow@wisconsin.gov)

### **Analysis Prepared by the Office of the Commissioner of Insurance**

#### **FINDING OF EMERGENCY**

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The State of Wisconsin will be implementing the Wisconsin Partnership program effective January 1, 2009, the date approved by the federal government in accordance with the Department of Health and Family Services' application for participation. As part of the enabling statute, the state requires all insurance intermediaries receive specific training prior to January 1, 2009. In order to minimize the impact of the additional training, the proposed rule permits the training, if approved, to qualify for continuing education therefore intermediaries can meet two training requirements simultaneously. For training to be approved and courses offered prior to January 1, 2009, the office needs to promulgate this rule to provide the guidelines necessary for creation and submission of training programs. Therefore the office must promulgate this rule as an emergency rule.

In addition, in order for insurers to offer products intended to qualify for the Wisconsin partnership program, such products shall be submitted to the office prior to use. The insurers must submit those products sufficiently in advance of January 1, 2009, so that there is time for review by the office and implementation time for the insurers.

These changes include modifications to s. Ins 3.455 including repealing and recreating the applicable definitions and modifying the conversion requirements; modifications to Ins 3.46 including deletion of the blanket exemption for group long-term care products replaced with narrow exceptions, modification to the marketing and advertising requirements with notable new requirement for insurers and intermediaries to submit to OCI marketing and advertisement material prior to use new group insurance requirements, modifications to the permissive limitations and exclusions, disclosures, replacement requirements, reporting requirements for insurers added regarding suitability; conversion modifications, incontestability and standards for marketing. The appendices to s. Ins 3.46 have also been repealed and recreated and now include several reporting forms for tracking suitability, rescissions, claims denial, replacement and lapses by state to be filed by insurers. As noted above the major addition to s. Ins 3.46 is the intermediary training requirement as required by s. 628.348 (1), Stats. Finally, the changes also include a new section, s. Ins 3.465 and appendices, related to the Wisconsin partnership program that is to be available beginning January 1, 2009.

A combined rule hearing will be held for both the emergency and permanent rule on June 16<sup>th</sup> as noticed.

#### ***Statutes interpreted***

Sections 600.01, 601.415 (8), and 628.34 (12), 628.348, 632.76, 632.81, 632.82, 632.825 Stats.

#### ***Statutory authority***

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 628.348, 632.76, 632.81, 632.82 Stats.

### ***Explanation of agency authority***

The OCI, in order to comply and implement the requirements of 2007 Wis. Act 20, creating the Wisconsin Long-Term Care Insurance Partnership Program (Partnership Program) including the requirements for intermediary training and the process by which insurers submit policies that are intended to qualify for the Partnership Program must adopt the 2000 and 2006 National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Act and Model Laws, pursuant to the Deficit Reduction Act of 2005 (Pub.L. 109-171) (DRA). These amendments are needed to expand consumer protection and comply with the requirements of the Center for Medicare and Medicaid Services (CMS) as delegated to the NAIC the function of regulating the insurers offering long-term care insurance products.

#### ***Related statutes or rules***

The Partnership Program is described at s. 49.45 (31), Stats., and requires coordination between the OCI and the Department of Health and Family Services.

#### ***Plain language summary***

The current administrative rule was last revised in 2001 and is not fully compliant with the NAIC Long-Term Care Model Act and NAIC Long-Term Care Model Law (NAIC Model Act and Model Law). When 2007 Wis. Act 20 created the Partnership Program, the OCI is required to implement the NAIC Model Act and Model Law in order for insurers to offer policies compliant with the DRA. Significant portions of the proposed rule update and expand definitions and require disclosure of these definitions to insureds so that they understand how the long-term care, home health care or nursing home insurance policy is able to be used and the limitations or exclusions that may be applied by insurers.

In section 3.455, the modifications primarily address the conversion from a group long-term care insurance policy to an individual long-term care insurance policy. The expanded information is intended to both comply with the NAIC Model Act and Model Law and Wisconsin conversion and continuation law. The section also includes expanded definition related to conversion of long-term care insurance policies.

Section 3.46 modifications begin with updated and revised definitions that are intended to provide consumers with greater specificity regarding terms used within long-term care, home health care and nursing home care insurance policies. Of note the current NAIC Model Act and Model Law do not exempt group long-term care insurers and as such the exemption in s. 3.46 (2) has been struck. Consumer protection elements are introduced or existing protections expanded throughout this section. One tool to both provide a check on the industry and its intermediaries and better assist consumers with the purchase of long-term care, home health care or nursing home care insurance is through the consolidation and expansion of the marketing requirements. Intermediaries and insurers are required to report on their prior dealings with consumers and state that the policy being sold is an appropriate product for that person. Although similar tools are currently required, the expansion requires additional data reporting to the OCI so that as the regulator we are provided a clearer picture of what sales are occurring and trends in the marketplace. The information will also highlight for both OCI and the insurers contracting with intermediaries information that may reveal unacceptable practices including high pressure sales tactics or interactions with persons resulting in a higher rate of complaints than other

intermediaries. Appropriateness of each sale is to be reviewed and must meet the insurer's guidelines.

Additionally, some of the modifications reflect changes in our society, for instance the recognition and use of the internet or on-line completion of applications. Also, nonforfeiture of benefits provisions reflect the increasing cost of long-term care and the affect those increases have on the insureds. Some seniors, at a time near to when the policy may be most useful are least able to afford premium increases. Nonforfeiture of benefits or contingent nonforfeiture provisions allow those who have paid premiums for many years benefits even after they are no longer able to keep their policy enforce.

New paragraphs are also added regarding upgrade and down-grades of policies, and expanded disclosure requirements are included for various benefits including nonforfeiture benefits. These modifications reflect the marketplace and include oversight provisions. These types of benefits potentially give consumers greater control and options when faced with increasing premiums rather than just lapsing the policy due in part to financial constraints. Expanded notification to insureds of new benefits or changing access to providers is also contained in this proposed rule, a modification that allows insureds options that they may not previously been informed of or had access to from within the same carrier. Requirements monitoring replacement of policies is also expanded to enhance oversight of actions by intermediaries and insurers.

Finally, s. 3.46 includes a new section related to initial and on-going intermediary training for long-term care insurance products. In part, this provision delineates training requirements related to the Wisconsin Partnership Program, but is required for all intermediaries offering, selling or negotiating long-term care contracts. Insurers are required to verify compliance to the OCI and OCI assure the Department of Health and Family Services that the intermediaries dealing with Wisconsin consumers are aware of the unique programs available in Wisconsin.

Section 3.465 is newly created to implement the requirements of the Wisconsin Long-Term Care Insurance Partnership Program. This section contains minimum inflation protection percentage increases by age as outlined by the federal government in order for the policies offered by insurers both meet the requirements of the Deficit Reduction Act of 2005 (Pub.L. 109-171). The section also delineates when and how insurers exchange existing long-term care insurance policies for policies that are intended to qualify for the Partnership Program in both the individual and group market. Appendices outline various notices that are to be provided to consumers at the time of solicitation and again at the point of sale. These are intended to educate the consumer so that the may be better able to make informed decisions.

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

It is understood that CMS is anticipating promulgating rules related to the reciprocity of the Partnership Program. Those rules are not anticipated to affect OCI.

#### ***Comparison of rules in adjacent states***

*Illinois:* Illinois adopted NAIC Model Act and Law in January 2003 with no substantive deviations. Illinois noticed proposed regulations in compliance with the 2006 NAIC Model Act and Law on August 3, 2007, without substantive deviations. Illinois HB 517 authorizing the Medicaid Office to file the review State Partnership Application for participation in the Partnership Program on August 16, 2007.

*Iowa:* Iowa adopted the 2000 version of the NAIC Model

Act and Model Law in July 2003. With the exception of the intermediary training that Iowa promulgated effective January 1, 2009, the state has notice proposals to adopt the 2006 NAIC Model Act and Law. The requirement for intermediary training requires 4 hours of initial training and 3 hour on-going training every 3 years thereafter. Iowa has not implemented the Partnership Program in accordance with the DRA as yet.

*Michigan:* Michigan adopted the 200 version of the NAIC Model Act and Law in June 2007. Michigan regulates long-term care insurance by statute and as such did not adopt exact language as the NAIC Model but did incorporate each area covered by the Model. Michigan did enact authorizing legislation to implement the Partnership Program in 2007 and filed its State Partnership Application retroactive to October, 2007. Michigan has not implemented the intermediary training for all intermediaries and is currently formalizing the process.

*Minnesota:* Minnesota adopted the 2000 NAIC Model Act and Law in January 2002, without substantial deviation. The DRA, Partnership Program became effective July 1, 2006. However there has been delays it was not operational until October 2007. Minnesota adopted the intermediary training and additionally requires non-resident intermediaries demonstrate knowledge of unique aspects of the Minnesota medial assistance program.

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

The OCI was required to implement portions of the Partnership Program in compliance with 2007 Wis. Act 20, and utilized a subcommittee comprised of consumer, industry, intermediary and regulatory members to achieve its duty. The group met, in open meetings, two times in the past two months to review and discuss Partnership drafts proposed by the OCI.

For the provisions updating and incorporating the NAIC models, the OCI reviewed each NAIC provision against existing Wisconsin law and rule to ensure consumer protections were not lost in the process and to expand consumer information.

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

The key provision that may have an effect on small businesses is the requirement for long-term care intermediary initial and on-going training. The OCI included a provision to permit the training to qualify as continuing education credits and to recognize courses non-resident intermediaries may take in states other than Wisconsin. With the exception of two-credit hours that must include the training information developed and maintained by the Department of Health and Family Services, the training requirements allow for the greatest flexibility to not unduly burden intermediaries or unnecessarily increase expenses related to receiving the required training. It is expected, in light of these considerations that if there is any effect, the effect on small businesses will not be significant.

#### ***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 intermediaries and small insurers offering long-term care insurance or life insurance with long-term care riders.

**Description of reporting and bookkeeping procedures required**

Insurance intermediaries will need to track their training to insurance compliance with the initial and biennial training requirements and the insurers will need to track the same for the intermediaries authorized to represent them. The tracking should not be a significant burden or require additional procedures than are currently in place for tracking continuing education.

**Description of professional skills required**

None beyond those currently required.

**Fiscal Estimate****State fiscal effect**

None

**Local fiscal effect**

None

**Long-range fiscal implications**

None

**Notice of Hearing****Natural Resources**

*Fish, Game, etc., Ch. NR 1—*

**CR 08-046**

NOTICE IS HEREBY GIVEN that pursuant to s. 227.11 (2) (a), Stats., interpreting s. 28.11 (5m) (am), Stats., the Department of Natural Resources will hold a public hearing on the revision of s. NR 47.70, Wis. Adm. Code, relating to the county forest administration grant program.

**Hearing Information**

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

**June 16, 2008 – Video conference participation** will be available at:  
Monday  
10:00 a.m.

Room 139, State Office Building  
718 W. Clairemont Avenue  
Eau Claire

Room 8F, State Office Building  
101 E. Wilson Street  
Madison

Conference Rm. 3, DNR Regional Hdqrs.  
107 Sutliff Avenue  
Rhinelander

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Jeff Barkley at (608) 264-9217 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Agency Contact Person, Submission of Comments, and Copies of Proposed Rule**

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Jeff Barkley, Bureau of Forest Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until June

17, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Barkley.

**Analysis Prepared by Dept. of Natural Resources**

The amendment of s. 28.11 (5m), Stats., in the recent budget necessitates changes to s. NR 47.70, Wis. Adm. Code, to implement the statutory change to the county forest administration grant program. The change makes eligible for cost-sharing a county's dues to a non-profit organization that represents the collective interests of counties in the county forest program and that serves as a liaison to the Department of Natural Resources. Previously known as the County Forest Administrator Grant, this grant program provides encouragement to counties to hire professional forestry staff to manage their county forests. The previous version of this grant provided 50% cost-sharing of the salary and benefits for a professional forester in the position of county forest administrator or assistant county forest administrator. Those payments would continue under the new version of the program along with cost-sharing of the non-profit organization dues. The maximum payment for the dues portion of this grant for all participating county forests combined is \$50,000 annually.

**Initial Regulatory Flexibility Analysis**

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at [SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us) or by calling (608) 266-1959.

**Environmental Analysis**

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

**Fiscal Estimate****Summary**

The existing non-profit organization representing the collective county forests is the Wisconsin County Forests Association (WCFA). Their existing dues structure for participating counties is \$1000 plus an acreage assessment of \$.047/acre entered into the county forest program as defined in s. 28.11 Wis. Stats. Currently all twenty-nine counties participate with a total acreage of 2,358,185 acres. Total dues equate to \$139,835 annually. Section 28.11 (5m) (am) Wis. Stats., authorizes up to a 50% grant for this portion of the administration grant program, not to exceed \$50,000 annually. At the current dues structure, 50% of the total dues is \$69,918 which exceeds the maximum \$50,000 allotted for this portion of the grant. A pro-rate of this portion of the grant would need to be applied to each county.

**Assumptions**

- The WCFA will continue to function as the non-profit organization representing the collective county forests.
- Future dues to WCFA will not go down.

- The maximum of \$50,000 will be required to fund this portion of the grant in the future.

#### **State government fiscal effect**

Increased costs to be absorbed within the agency's budget.

#### **Local government fiscal effect**

No local government costs — with permissive decrease costs and permissive increase revenues.

#### **Types of local governmental units affected**

Counties

#### **Fund source affected**

SEG

#### **Affected ch. 20 appropriations**

s. 20.370 (5) (bw)

## **Notice of Hearing Regulation and Licensing EmR0811**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 15.405 (11), 227.11 (2), 452.04 (2), 452.05 (1) (b) and 452.07, Stats., and interpreting ss. 452.04 (2), 452.05 (1) (b) and 452.07, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below on emergency rules to amend s. RL 16.06 (1) (a), (b) and (d), relating to how to use approved forms for the practice of real estate.

#### **Hearing Information**

**Date:** June 26, 2008  
**Time:** 10:15 A.M.  
**Location:** 1400 East Washington Avenue  
 (Enter at 55 North Dickinson Street)  
 Room 121C  
 Madison, Wisconsin

#### **Submission of Written Comments**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by July 1, 2008, to be included in the record of rule-making proceedings.

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Comments must be received no later than July 1, 2008.

#### **Agency Contact Person**

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Phone: (608) 266-0495. Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us).

## **Analysis Prepared by Department of Regulation and Licensing**

### FINDING OF EMERGENCY

The Department of Regulation and Licensing finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments into effect prior to the time the amendments would take if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, WB-1, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing education class demonstrating the allowed means to modify an approved form. The modified form was shown to industry stakeholders, the department's council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule-making to prevent modification of forms such as WB-1 in the manner submitted.

#### **Statutes interpreted**

Sections 452.04 (2), 452.05 (1) (b) and 452.07, Stats.

#### **Statutory authority**

Sections 15.405 (11), 227.11 (2), 452.04 (2), 452.05 (1) (b) and 452.07, Stats.

#### **Explanation of agency authority**

The Department of Regulation and Licensing has authority under ss. 452.05 (1) (b) and 452.07, Stats., to promulgate rules for the guidance of the real estate profession and to approve forms for use in real estate practice. The emergency rule has also been reviewed and approved by the council on forms which is currently meeting to review and revise forms for real estate transactions as provided in s. 452.06, Stats., as well as reviewed by the Real Estate Board as required by s. 452.07 (3), Stats., and recommended by the board for promulgation.

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

Section RL 16.06.

#### **Plain language analysis**

The purpose of this emergency rule is to prohibit the altering of approved real estate forms such that blank lines are inserted between provisions of department approved text, similar in form, content and appearance, such that the inserted provisions create the implication that they are approved by the department.

Section RL 16.06 (1) (a) amends a paragraph relating to the appearance and numbering of lines appearing on a page of an approved form. Section RL 16.06 (1) (b) amends a paragraph changing the words "spaces" and "blanks" to "blanks" and "blank lines." And Section RL 16.06 (1) (d) amends a paragraph to prohibit the altering of a form except for modifying margins or font size.

#### **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**

*Iowa:* Iowa does not have rules or statutory authority relating to governmental approval of forms.



*Illinois:* Illinois does not have rules or statutory authority relating to governmental approval of forms.

*Michigan:* Michigan does not have rules or statutory authority relating to governmental approval of forms.

*Minnesota:* Minnesota does not have rules or statutory authority relating to governmental approval of forms.

### Summary of factual data and analytical methodologies

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, WB-1, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing education class demonstrating the allowed means to modify an approved form. The modified form was shown to industry stakeholders, the department's council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule-making to prevent modification of forms such as WB-1 in the manner submitted.

The proposed changes to s. RL 16.06 are designed to prohibit the altering of the format of approved forms and the subsequent addition of textual content, rather such changes must be made by either filling in blank lines currently inserted into the text of a form for such purpose, or by the attachment of an addendum where proper under the currently existing rules.

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

This rule will more clearly specify that department approved real estate contract forms cannot be substantively altered. At the start of the biennium, there were 13,090 real estate brokers licensed in Wisconsin and 15,914 real estate salespersons licensed in Wisconsin. A significant percentage of these real estate brokers and salespersons work in small businesses. This rule change should not have an effect on small business as the department is aware of only one individual that is currently altering the substantive content of department approved real estate contract forms.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

### Initial Regulatory Flexibility Analysis

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at [larry.martin@drl.state.wi.us](mailto:larry.martin@drl.state.wi.us), or by calling (608) 266-8608.

### Fiscal Estimate

#### Summary

The department estimates that this rule will require staff time in the Division of Board Services and the Office of Legal Counsel. The total one-time salary and fringe costs in the Division of Professional Credentialing and Office of Legal Counsel are estimated at \$1,600.

### *Anticipated costs incurred by private sector*

The department finds that this rule has no significant fiscal effect on the private sector.

### Text of Proposed Rule

SECTION 1. RL 16.06 (1) (a), (b) and (d) are amended to read:

RL 16.06 (1) (a) Shall assure that the numbering of lines ~~and~~ line contents and the lines appearing on each page are identical to those on the department's forms.

(b) May not reproduce the form in such a manner that optional provisions are left out and blank spaces lines are filled in without any indication of where the optional provisions and ~~blanks~~ blank lines occur on the department's form.

(d) May not add additional blank lines, ~~provided that such lines remain unnumbered and the contents and line numbers on the department's form are not altered~~ or add additional lines containing textual content, or alter the format of the form in any other manner. "Alter the format" does not include modifying margins or font size consistent with par. (a). To add textual content or additional provisions, a licensee shall only fill in blank lines provided for that purpose on a form or add addenda containing additional or altered provisions as provided in subs. (4) and (5).

## Notice of Hearing Regulation and Licensing CR 08-040

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 15.405 (11), 227.11 (2), 452.04 (2), 452.05 (1) (b) and 452.07, Stats., and interpreting ss. 452.04 (2), 452.05 (1) (b) and 452.07, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to amend s. RL 16.06 (1) (a), (b) and (d), relating to how to use approved forms for the practice of real estate.

### Hearing Information

**Date:** June 26, 2008  
**Time:** 10:15 A.M.  
**Location:** 1400 East Washington Avenue  
(Enter at 55 North Dickinson Street)  
Room 121C  
Madison, Wisconsin

### Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by July 1, 2008, to be included in the record of rule-making proceedings.

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708, email at [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Comments must be received on or before July 1, 2008 to be included in the record of rule-making proceedings.

### Agency Contact Person

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Phone: (608) 266-0495. Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us).

### Analysis Prepared by Dept. of Regulation and Licensing

#### *Statutes interpreted*

Sections 452.04 (2), 452.05 (1) (b) and 452.07, Stats.

#### *Statutory authority*

Sections 15.405 (11), 227.11 (2), 452.04 (2), 452.05 (1) (b) and 452.07, Stats.

#### *Explanation of agency authority*

The Department of Regulation and Licensing has authority under ss. 452.05 (1) (b) and 452.07, Stats., to promulgate rules for the guidance of the real estate profession and to approve forms for use in real estate practice. This proposed rule-making order has been reviewed and approved by the council on forms which is currently meeting to review and revise forms for real estate transactions as provided in s. 452.06, Stats., as well as reviewed by the Real Estate Board as required by s. 452.07 (3), Stats., and recommended by the board for promulgation.

#### *Related statute or rule*

Section RL 16.06.

#### *Plain language analysis*

The purpose of this proposed rule-making order is to prohibit the altering of approved real estate forms such that blank lines are inserted between provisions of department approved text, similar in form, content and appearance, such that the inserted provisions create the implication that they are approved by the department. Such changes must be made by either filling in blank lines currently inserted into the text of a form for such purpose, or by the attachment of an addendum where proper under the currently existing rules.

Section RL 16.06 (1) (a) amends a paragraph relating to the appearance and numbering of lines appearing on a page of an approved form. Section RL 16.06 (1) (b) amends a paragraph changing the words "spaces" and "blanks" to "blanks" and "blank lines." And Section RL 16.06 (1) (d) amends a paragraph to prohibit the altering of a form except for modifying margins or font size.

#### *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*

*Iowa:* Iowa does not have rules or statutory authority relating to governmental approval of forms.

*Illinois:* Illinois does not have rules or statutory authority relating to governmental approval of forms.

*Michigan:* Michigan does not have rules or statutory authority relating to governmental approval of forms.

*Minnesota:* Minnesota does not have rules or statutory authority relating to governmental approval of forms.

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

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, WB-1, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing

education class demonstrating the allowed means to modify an approved form. The modified form was shown to industry stakeholders, the department's council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule-making to prevent modification of forms such as WB-1 in the manner submitted.

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

The proposed rules would more clearly specify that department approved real estate contract forms cannot be substantively altered. At the start of the biennium, there were 13,090 real estate brokers licensed in Wisconsin and 15,914 real estate salespersons licensed in Wisconsin. A significant percentage of these real estate brokers and salespersons work in small businesses. This rule change should not have an effect on small business as the department is aware of only one individual that is currently altering the substantive content of department approved real estate contract forms.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

#### **Initial Regulatory Flexibility Analysis**

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at [larry.martin@drl.state.wi.us](mailto:larry.martin@drl.state.wi.us), or by calling (608) 266-8608.

#### **Fiscal Estimate**

##### *Summary*

The department estimates that this rule will require staff time in the Division of Board Services and the Office of Legal Counsel. The total one-time salary and fringe costs in the Division of Professional Credentialing and Office of Legal Counsel are estimated at \$1,600.

#### *Anticipated costs incurred by private sector*

The department finds that this rule has no significant fiscal effect on the private sector.

#### **Text of Proposed Rule**

SECTION 1. RL 16.06 (1) (a), (b) and (d) are amended to read:

RL 16.06 (1) (a) Shall assure that the numbering of lines ~~and~~ line contents and the lines appearing on each page are identical to those on the department's forms.

(b) May not reproduce the form in such a manner that optional provisions are left out and blank spaces lines are filled in without any indication of where the optional provisions and blanks blank lines occur on the department's form.

(d) May not add additional blank lines, ~~provided that such lines remain unnumbered and the contents and line numbers on the department's form are not altered~~ or add additional lines containing textual content, or alter the format of the form in any other manner. "Alter the format" does not include modifying margins or font size consistent with par. (a). To add textual content or additional provisions, a licensee shall only fill in blank lines provided for that purpose on a form or add addenda containing additional or altered provisions as provided in subs. (4) and (5).

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# Submittal of Proposed Rules to the Legislature

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

## **Employee Trust Funds** **CR 08–016**

A rule-making order revising Chapter ETF 70, relating to the start date for phasing out funds under the Wisconsin Deferred Compensation plan and to emergency withdrawals for beneficiaries.

## **Natural Resources** *Fish, Game, etc., Chs. NR 1—* **CR 08–012**

A rule-making order revising sections NR 20.20 and 21.04, relating to hook and line harvest of lake sturgeon.

## **Natural Resources** *Fish, Game, etc., Chs. NR 1—* **CR 08–013**

A rule-making order revising Chapters NR 10, 12 and 19, relating to deer hunting as it relates to the management of chronic wasting disease.

## **Natural Resources**

### *Environmental Protection–Air Pollution Control,* *Chs. NR 400—* **CR 07–082**

A rule-making order revising Chapters NR 404 and 484, relating to ambient air quality standards and affecting small business.

## **Public Instruction** **CR 08–007**

A rule-making order revising Chapter PI 31, relating to grants for science, technology, engineering, and mathematics programs.

## **Transportation** **CR 08–029**

A rule-making order revising Chapters Trans 137 to 139, relating to motor vehicle dealer franchise operations, recordkeeping and trade practices.

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## Rule Orders Filed with the Legislative Reference Bureau

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*The following administrative rule orders have been filed with the Legislative Reference Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Legislative Reference Bureau at [bruce.hoesly@legis.wisconsin.gov](mailto:bruce.hoesly@legis.wisconsin.gov) or (608) 266-7590 for updated information on the effective dates for the listed rule orders.*

### Administration CR 07-106

A rule-making order creating Chapter Adm 49, relating to plat review fees.  
Effective 7-1-08 or 8-1-08.

### Agriculture, Trade and Consumer Protection CR 07-061

A rule-making order revising Chapters ATCP 10 and 12, relating to animal health fees.  
Effective 7-1-08 and 7-1-09.

### Commerce

#### *Licenses, Certifications, and Registrations, Ch. Comm 5 Elevators, Escalators and Lift Devices, Ch. Comm 18* CR 07-089

A rule-making order revising Chapters Comm 5 and 18, relating to the licensing of elevator contractors and installers.  
Effective 7-1-08.

### Commerce

#### *Grants for Construction Career Academies, Ch. Comm 4* CR 07-117

A rule-making order creating Chapter Comm 4, relating to grants for construction career academies and affecting small business.  
Effective 7-1-08 or 8-1-08.

### Employee Trust Funds CR 07-062

A rule-making order revising Chapters ETF 10, 11, 20 and 50, relating to the purchase of credit for service.  
Effective 7-1-08 or 8-1-08.

### Health and Family Services

#### *Mgmt. & Technology & Strategic Finance, Chs. HFS 1— Community Services, Chs. HFS 30—* CR 08-017

A rule-making order revising Chapters HFS 1 and 65, relating to determining parental payment limits for children's long term support services and family support services.  
Effective 7-1-08.

### Health and Family Services *Health, Chs. HFS 110—* CR 07-115

A rule-making order to repeal and recreate Chapter HFS 149, relating to the special supplemental nutrition program for Women, Infants and Children (WIC) vendors and participants, and affecting small businesses.  
Effective 7-1-08.

### Health and Family Services *Health, Chs. HFS 110—* CR 08-005

A rule-making order creating s. HFS 115.04 (14), relating to screening newborns for Severe Combined Immuno-deficiency and related conditions of immunodeficiency (SCID).  
Effective 7-1-08.

### Transportation CR 07-081

A rule-making order revising Chapter Trans 101, relating to the demerit point system.  
Effective 7-1-08.

### Transportation CR 07-114

A rule-making order revising Chapter Trans 131, relating to the vehicle emission inspection program.  
Effective 7-1-08.

### Transportation CR 08-002

A rule-making order creating Chapter Trans 178, relating to the Unified Carrier Registration system.  
Effective 7-1-08.

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## Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

### Commerce CR 07-101

A rule-making order revising ch. Comm 130, relating to the manufacturing investment credit. Effective 6-1-08.

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

As outlined in section 560.28 (2) of the Statutes, these rules establish uniform criteria for becoming certified as eligible to claim tax credits for fuel and electricity used in manufacturing, under sections 71.07 (3t), 71.28 (3t), and 71.47 (3t) of the Statutes.

The Hearing comments included recommendations to develop an appeal process, and to develop guidance on how certification would occur in situations where there was a change in corporate ownership or structure during the 2003-2006 time period. The rules were not changed in response to these comments because the prevailing legislation - 2003 Wisconsin Act 99 - does not accommodate these options.

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

No comments were received.

### Employment Relations Commission CR 07-092

A rule-making order revising section ERC 10.08, relating to increased filing fees. Effective 6-1-08.

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

Small businesses rarely use those Commission services (grievance arbitration, mediation, and unfair labor practice complaints) impacted by the increase in filing fees. The occasional impact on small business of the fee increase will be limited to payment of the employer share of the increased fees for grievance arbitration and mediation (increase of \$150 for total of \$400) or the payment of the increased fee for filing an unfair labor practice complaint (increase of \$20 for total of \$100). Compliance with the emergency rules and the proposed permanent rules does not require any reporting, bookkeeping or professional skills.

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

No comments were reported.

### Natural Resources CR 06-109

A rule-making order revising ch. NR 440, relating to incorporation of revisions and additions to the federal New Source Performance Standards. Effective 6-1-08.

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

The proposed rules are substantively identical to rules already in effect at the federal level. Any small businesses currently subject to the federal requirements will, therefore, not be impacted by incorporation of these requirements into the Wisconsin administrative rules.

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

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On November 19, 2007, the Assembly Committee on Natural Resources. On December 19, 2007, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments or a request for modification as a result of this hearing.

### Natural Resources CR 07-074

A rule-making order revising chs. NR 19 and 20, relating to the control of fish diseases and invasive species. Effective 6-1-08.

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

The proposed rule will affect bait dealers, wholesale fish dealers, commercial fishers, anglers, boaters and individuals involved in the harvest, rearing or use of fish bait. This rule will have varying degrees of financial impact on bait dealers, wholesale fish dealers, commercial fishers and other businesses involved in the harvest, rearing or use of fish bait. The impact will depend upon the degree to which the geographic scope of the virus expands, as well as the ability of a business to comply with both the DNR rule changes and the fish testing rule changes that are anticipated to be implemented by DATCP as a result of VHS.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee

on Environment and Natural Resources. On January 16, 2008, the Assembly Committee on Natural Resources held a public hearing and requested modifications to the proposed rule. On January

On March 26, 2008, the Natural Resources Board adopted modifications that will allow anglers to retain minnows after a fishing trip if the minnows were obtained from a Wisconsin bait dealer and have not been exposed to the water or fish of the lake or stream, or the minnows were obtained from a Wisconsin bait dealer and will subsequently be used for bait only on that same water body; up to 2 gallons of water in a container holding those minnows may be transported away from the water body; the harvest of minnows (except suckers) from any water body where the Department has reason to believe that the VHS virus may be present (as identified by the Department) is prohibited; and suckers may be harvested from those waters, but may not be transported alive away from those waters.

The modifications were submitted to the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. The Department did not receive any comments from the committees on the proposed modifications.

### **Natural Resources CR 07-088**

A rule-making order 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. Effective 6-1-08.

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

The Department believes that few if any small businesses are affected. Staying implementation of ch. NR 462 would initially reduce the impact on any affected small business. However, if section 112(j) of the Clean Air Act (MACT hammer) applies, any affected small businesses would be required to prepare and submit permit applications and may be subject to more stringent requirements under a case-by-case Boiler MACT determination.

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

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On March 6, 2008, the Assembly Committee on Natural Resources held a public hearing. No comments or recommendations were received by the Department as a result of this hearing.

### **Pharmacy Examining Board CR 07-097**

A rule-making order amending s. Phar 7.02, relating to prescription labels. Effective 6-1-08.

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

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

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

No comments were reported.

### **Pharmacy Examining Board CR 07-099**

A rule-making order repealing s. Phar 7.015 (3) (d) and creating s. Phar 7.015 (2) (q), relating to the transfer of a prescription drug by a pharmacy technician. Effective 6-1-08.

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

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

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

No comments were reported.

### **Public Service Commission CR 07-044**

A rule-making order amending ss. PSC 111.71 and 112.073, relating to the information to be included in an electric utility construction application. Effective 6-1-08.

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

This rulemaking does not affect small businesses.

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

No comments were reported.

### **Regulation and Licensing CR 07-098**

A rule-making order revising chs. RL 83 and 86 and Appendix I of ch. RL 87, relating to the uniform standards of professional appraisal practice (USPAP) for real estate appraisers. Effective 6-1-08.

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

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

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

No comments were reported.

### **Revenue CR 07-109**

A rule-making order amending s. Tax 8.63 (1) and creating s. Tax 8.63 (1m) and (7), relating to liquor wholesaler warehouse facilities. Effective 6-1-08.

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

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

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

No comments were reported.

### **Workforce Development CR 07-071**

A rule-making order revising ch. DWD 55, relating to child care certification and affecting small businesses. Effective 6-1-08.

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

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

businesses. The proposed rules will affect small businesses but will not have a significant economic impact on a substantial number of small businesses. The standards in these rules are intended to protect and promote the health, safety and welfare of children in the care of unlicensed child care providers who receive reimbursement through state or federal funds.

Reporting requirements in the current rule include a general requirement to report any changes that affect the provider's eligibility under this chapter. Providers found this general requirement unclear so the proposed rules specify the important eligibility changes that must be reported to the county or tribal agency.

Bookkeeping requirements in the proposed rules include a requirement that there be a contract for each enrolled child be signed by the child care operator and a parent or guardian, and the operator must have on file a copy of the driver's license for all persons transporting children.

Professional skills include a requirement that a school-age child care operator have a high school diploma or equivalent; all certified family child care operators, employees, and volunteers who provide care and supervision for children under 5 years of age shall receive department-approved training on shaken baby syndrome and impacted babies and appropriate ways to manage crying or fussing children; and all family child care operators and substitutes who have worked at least 240 hours in a Level I (regular) home must take 2 credits of early childhood training or non-credit

department-approved training. The T.E.A.C.H. Early Childhood® WISCONSIN Scholarship Program offers scholarship opportunities to teachers, family child care providers, center directors and administrators for credit-based training.

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

The Department modified the definition of "certified family child care operator" in response to comments by the Senate Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection.

### **Workforce Development CR 08-003**

A rule-making order revising ss. DWD 290.155 (1) and 293.02 (1) and (2), relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements and affecting small businesses. Effective 6-1-08.

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

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

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

No comments were received.

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## Sections Affected by Rule Revisions and Corrections

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

### Revisions

#### Commerce

##### Ch. Comm 130 (Entire chapter)

S. NR 440.26  
S. NR 440.27  
S. NR 440.28  
S. NR 440.285

#### Employment Relations Commission

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S. Phar 7.015 (2) (q) and (3) (d)  
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 S. PSC 111.71

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**Revenue****Ch. Tax 8**

S. Tax 8.63 (1), (1m) and (7)

**Workforce Development****Ch. DWD 55**

Ch. DWD 55 (title)  
 S. DWD 55.01  
 S. DWD 55.02 (1) to (3k), (4m), (5g) to (8m), (9c) to (9r), (12m), (15), (17), (20) to (20w), (22)  
 S. DWD 55.04 (1), (2), (3) (b), (e), (f), (4), (5), (7), (9)  
 S. DWD 55.05  
 S. DWD 55.06 (1) (i), (j) and (2) to (4)  
 S. DWD 55.065  
 S. DWD 55.07  
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 S. DWD 55.09 (1) to (2) (a), (e) to (g), (3) (c), (4) (a), (b), (5) (d), (6) (f), (7) (am) to (c), (8) (c), (9) (b), (12) (b) and (d) to (g)

**Ch. DWD 290**

S. DWD 290.155 (1)

**Ch. DWD 293**

S. DWD 293.02

**Editorial Corrections**

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

**Natural Resources****Ch. NR 440**

S. NR 440.17 (1) and (2)  
 S. NR 440.216 (3) (e), (12) (g) and (13) (d)  
 S. NR 440.285 (1) (e) and (4) (c)  
 S. NR 440.50 (6) (b) and (c)  
 S. NR 440.62 (1) (e)  
 S. NR 440.642 (4) (b), (o), (6) (e), (f), (7) (c) to (e), (i), (8) (a), (e), (10) (a) and (d)  
 S. NR 440.644 (1) (c), (4) (c), (g), (i), (j), (k), (7) (a) and (b)

S. NR 440.647 (1) (j)  
 S. NR 440.675 (1) (d) and (2) (p)  
 S. NR 440.686 (1) (d) and (2) (p)  
 S. NR 440.705 (1) (d)  
 S. NR 440.71 (2) (a), (4) (b), (5) (g) and (8) (f)  
 S. NR 440.72 (2) (a)  
 S. NR 440.74 (2) (a), (4) (a), (5) (g) and (8) (b)  
 S. NR 440.75 (3) (d), (5) (b) and (8) (e)

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## Executive Orders

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

**Executive Order 247.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Lance Corporal Dean Opicka of the United States Marine Corps Reserve Who Lost His Life During Operation Iraqi Freedom.

**Executive Order 248.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Corporal Richard Nelson of the United States Marine Corps Reserve Who Lost His Life During Operation Iraqi Freedom.

**Executive Order 249.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Sergeant Steven Christofferson of the United States Army Who Lost His Life During Operation Iraqi Freedom.

**Executive Order 250.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Peace Officers Who Have Given Their Lives in the Line of Duty.

**Executive Order 251.** Relating to the Findings of the Commission on Reducing Racial Disparities in the Wisconsin Justice System and the Creation of the Racial Disparities Oversight Commission.

**Executive Order 252.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Darren Bean, M.D., a member of the UW Hospital and Clinics Med Flight Crew.

**Executive Order 253.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Pilot Steve Lipperer, a member of the UW Hospital and Clinics Med Flight Crew.

**Executive Order 254.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Mark Coyne, R.N., a member of the UW Hospital and Clinics Med Flight Crew.

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# Public Notices

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## Health and Family Services

### Medical Assistance Reimbursement of Nursing Homes

#### State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 08–09

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 July 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 provisions 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 \$36,955,200 all funds, (\$21,781,400 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 the 2007–2009 Biennial Budget Bill and to disburse the \$35,781,200 allotted in the bill to a rate increase of approximately 5% for nursing facilities and the \$1,174,000 allotted for a rate increase of 2% for ICF–MRs. These modifications will include adjustments to the maximums, per diems, and other payment parameters in Sections 5.400, 5.500, 5.700, 5.800 and 5.900, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000.
2. Changing references to previous years for descriptive reasons will be done where necessary.
3. Modify the labor factors listed in Section 5.410.
4. Change the dates of the definitions of base cost reporting period, common period, and rate payment year in Sections 1.302, 1.303, and 1.314 to reflect the 2008–2009 period.
5. Modify the targets in the property allowance in Section 3.532.
6. Revise contact names and addresses.
7. Revise Section 2.140 to explain which residents will be included in the counts on the dates in Section 5.422.
8. Delete Sections 1.256 and 1.260 as they refer to the owner compensation test.
9. Revise Sections 1.250, 3.140, 3.531 and 4.900.
10. Adjust Sections 2.700 and 3.600 to include an incentive for Medicaid patients in a prior approved innovative area
11. Consider payment adjustments for facilities that provide services to bariatric residents.
12. Modify the weighting factors of the RUGs case mix index and the level of care case mix index in Section 3.100 to complete the transition RUGs as the primary case mix factor.
13. Eliminate all references to the level of care and the level of care case mix index.

14. Modify the direct care calculation in 3.100 to eliminate the common period base plus the inflation increment and create a single reimbursement period allowance.
15. Clarify the allocation of direct care expense between nursing facilities and ICF-MRs for facilities with combined cost reports
16. Explore alternative mechanisms to implement the regional labor factors in Section 5.400.
17. Eliminate Sections 2.750 and 3.655, the temporary inflation adjustment for ICF-MRs.

**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.

**Written Comments/Meetings:**

Written comments on the proposed changes may be sent to the Division of Long Term Care, 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 B274 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.

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