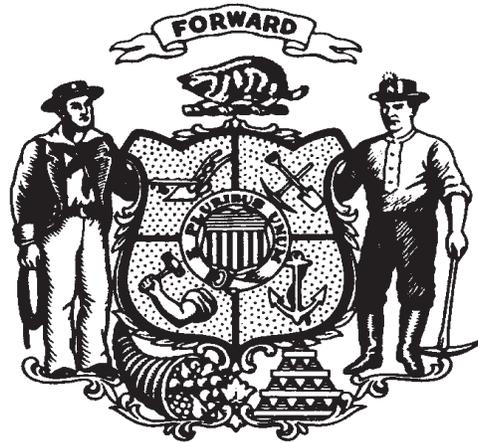


Wisconsin Administrative Register

No. 603



Publication Date: March 14, 2006

Effective Date: March 15, 2006



Revisor of Statutes Bureau
Suite 800, 131 West Wilson Street
Madison, Wisconsin 53703-3233

The 2003 – 04 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*[®] CD-ROM

Bound Volumes:

Prices for the 2003 – 04 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

Hard Cover	Hard Cover	Soft Cover	Soft Cover
<u>With Postage</u>	<u>Without Postage</u>	<u>With Postage</u>	<u>Without Postage</u>
\$152.00	\$146.00	\$130.00	\$124.00

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419.

WisLaw[®] CD-ROM:

Up-to-date *WisLaw*[®] CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*[®] contains:

- Wisconsin Statutes and Annotations with Index
- Table of Cross-References and Table of Sections Affected by Acts
- Wisconsin Administrative Code with Index, Administrative Register, and Emergency Rules
- Executive Orders
- Wisconsin Acts with Index
- Supreme Court Rules and Internal Operating Procedures
- Recent Opinions of the Attorney General with Index
- Wisconsin Constitution with Annotations and Index
- U.S. Constitution
- Wisconsin Town Law Forms
- Wisconsin Code of Military Justice

All of the above *WisLaw*[®] Infobases are substantially integrated with hypertext links. The statutes now feature thousands of links between administrative rules and their authorizing statutes. State agencies are using *WisLaw*[®] for their legal research. *WisLaw*[®] is distributed by the Document Sales and Distribution Section to state agencies that submit a complimentary annual subscription form.

WisLaw[®] is available only by annual subscription. *WisLaw*[®] End-user license and subscription order forms are available at Document Sales or at <http://www.legis.state.wi.us/rsb>. CDs will be delivered only upon receipt of a signed license and subscription form and full payment. An annual subscription plus a license for no more than one simultaneous user costs \$99. Licenses for no more than 4 simultaneous users or for no more than 10 simultaneous users cost \$149 or \$199, respectively. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

Orders by FAX will **not** be accepted; call (608) 266–3358 or TTY (608) 264–8499 or write to:

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

Table of contents

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

Agriculture, Trade and Consumer Protection:

Rules relating to **chs. ATCP 10 and 11**, relating to a poultry flock certification program. **[First Appearance]**

Elections Board:

Rules relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee.

Insurance:

Rules relating to small employer uniform employee application for group health insurance.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Rules relating to the administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program.

Rules relating to hunter education fees.

Rules relating to master logging certification scholarships.

Rules relating to commercial fishing for lake trout in Lake Superior.

Rules relating to the issuance of turkey hunting permits.

Environmental Protection–Water Regulation, Chs. NR 300—

Rules relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

Revenue:

Rules relating to the computation of the apportionment fraction by multistated public utilities and telecommunications companies.

Rules relating to electronic funds transfer, information returns and wage statements.

Technical College System Board:

Rules relating to training program grants.

Transportation:

Rules relating to motor carrier safety regulations.

Workforce Development:

Labor Standards, Chs. DWD 270–279

Rules relating to overtime pay for employees performing companionship services.

Public Works Construction Projects, Chs. DWD 290–294

Rules relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Scope statements.**Pages 9 to 10**

Insurance:

Rules affecting the Injured Patients and Families Compensation Fund peer review surcharge rates.

Medical Examining Board:	Rules affecting s. Med 1.06 (3), relating to the 7 year time limit for completion of the three qualifying examinations required of M.D. applicants.
Public Service Commission:	Rules affecting chs. PSC 7 and 172.
Transportation:	Rules affecting ch Trans 103, relating to habitual traffic offenders and repeat habitual traffic offenders. Rules affecting ch Trans 138, relating to out–of–state dealers who sell vehicles to Wisconsin residents via the internet.
Veterinary Examining Board:	Rules relating to veterinarians providing informed consent to clients.

Submittal of rules to legislative council clearinghouse. Pages 11 to 12

Dentistry Examining Board:	Rules relating to the definition of “local anesthesia” administered by dental hygienists.
Health and Family Services:	Rules affecting ch. HFS 148, relating to cancer drug repository.
Natural Resources:	Rules affecting ch. NR 10, relating to deer hunting as it pertains to the control and eradication of chronic wasting disease (CWD). Rules affecting chs. NR 10 and 11, relating to deer and turkey hunting, hunting and trapping techniques, permit and license issuance, dog training and learn–to–hunt programs. Rules affecting chs. NR 20 and 25, relating to fishing on the inland, outlying and boundary waters of Wisconsin.
Public Service Commission:	Rules relating to repealing rules adopted to meet requirements in s. 303.304 of the regulations of the Federal Price Commission.
Regulation and Licensing:	Rules relating to the 2006 edition of the Uniform Standards of Professional Appraisal Practice (USAPAP). Rules relating to educational programs for auctioneers.

Rule–making notices.

Pages 13 to 19

Agriculture, Trade and Consumer Protection:	Hearing to consider emergency rule changes relating to a poultry flock certification program.
Dentistry Examining Board:	Hearing to consider changes to ch. DE 7, relating to the definition of “local anesthesia” administered by dental hygienists.
Health and Family Services:	Hearing to consider changes to ch. HFS 148, relating to the cancer drug repository program.

Regulation and Licensing:	Hearing to consider changes to ch. RL 87 Appendix I, which incorporates by reference the 2005 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).
	Hearing to consider rules relating to ch. RL 128, relating to educational programs for auctioneers.
Submittal of proposed rules to the legislature.	Page 20
Commerce:	CR 05-110 – Ch. Comm 155, relating to interest on real estate trust accounts.
Health and Family Services:	CR 05-033 – Chs. HFS 105 and 107, relating to dental services under the medical assistance program.
Insurance:	CR 06-002 – Ch. Ins 17, relating to f/y 07 fund fees and mediation panel fees.
Natural Resources:	CR 05-087 – Chs. NR 46 and 47, relating to Managed Forest Law and the Wisconsin Forest Landowner's Grant Program.
	CR 05-106 – Ch. NR 47, relating to master logging certification scholarships.
Revenue:	CR 04-031 – Ch. Tax 2, relating to the apportionment of income by financial organizations.
Transportation:	CR 06-003 – Chs. Trans 325 and 326, relating to motor carrier safety regulations and motor carrier safety requirements for transportation of hazardous materials.
Rule orders filed with the revisor of statutes bureau.	Page 21
Natural Resources:	CR 05-072 – An order affecting ch. NR 485, relating to motor vehicle emission limitations and tampering with motor vehicle air pollution control equipment.
	CR 05-083 – An order affecting ch. NR 10, relating to deer hunting season at Straight Lake State Park.
	CR 05-085 – An order affecting chs. NR 20 and 25, relating to sport fishing for yellow perch in Green Bay and its major tributaries and all other tributary streams, rivers and ditches to Green Bay and to commercial fishing for yellow perch in zone 1 (Green Bay).
	CR 05-088 – An order affecting ch. NR 19, relating to establishing hunter education fees.
Transportation:	CR 05-109 – An order affecting ch. Trans 102, relating to the time period within which a person moving to Wisconsin may operate a motor vehicle under a driver license from his or her previous state of residence.

Emergency rules now in effect

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection

Rules adopted revising **chs. ATCP 10 and 11**, relating to a poultry flock certification program.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including the national poultry improvement program (NPIP). The NPIP is designed to prevent the spread of *Salmonella pullorum*, fowl typhoid and, in the case of turkeys, *Mycoplasma gallisepticum*. NPIP is governed by 9 CFR 145 and 147. NPIP enrollment is voluntary, but non-enrolled flocks are subject to certain movement restrictions.

(2) Current DATCP rules prohibit the import, use, sale or movement of poultry, farm-raised game birds or their eggs for breeding or hatching unless they originate from flocks that are enrolled in NPIP and meet NPIP standards. Current DATCP rules also prohibit the exhibition of poultry or farm-raised game birds at a fair, exhibition or swap meet unless they originate from an NPIP “pullorum-typhoid clean” or equivalent flock, or are individually tested for pullorum-typhoid.

(3) NPIP is primarily designed for large commercial flocks that move birds or eggs in interstate commerce. NPIP requires yearly testing of all sexually mature birds, and routine inspections. Fees for enrollment in the program differ based on flock size and purpose, and range from \$20 to \$200. NPIP enrollment and testing may be cost-prohibitive for small flocks. Current rules restrict market access and exhibition by small producers of poultry and farm-raised game birds, and

impose an unnecessary burden on those producers. Some small producers may be tempted to ignore or subvert current rules, in order to market or exhibit their poultry or farm-raised game birds. That may, in turn, create unnecessary risks of disease.

(4) It is urgently necessary to provide alternative disease monitoring options for small producers of poultry and farm-raised game birds, so that those producers can legally and economically move, market and exhibit their birds. The current lack of alternatives creates an unnecessary economic hardship, and an unnecessary risk of disease spread.

(5) DATCP has proposed rules which would create practical disease monitoring alternatives for small producers of poultry and farm-raised game birds. DATCP is proceeding to adopt those rules by normal rulemaking procedures. However, normal rulemaking procedures require at least a year to complete. A temporary emergency rule is needed to eliminate unnecessary hardship and risk in the short term, and to provide practical and effective disease monitoring for this year’s fair and exhibition season.

Publication Date:	March 3, 2006
Effective Date:	March 3, 2006
Expiration Date:	July 31, 2006
Hearing Date:	March 31, 2006
	[See Notice this Register]

Elections Board

Rules adopted creating **s. ElBd 1.395**, relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee and relating to the use of those converted funds whose contribution to the federal committee would not have been in compliance with Wisconsin law if the contribution had been made directly to a state campaign committee.

Finding of Emergency

The Elections Board finds that an emergency exists in the recent change in federal law that permits the transfer of the funds in a federal candidate campaign committee’s account to the candidate’s state campaign committee account and finds that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

Since the Bi-Partisan Campaign Reform Act of 2002 (BICRA), transfers of funds from a federal campaign committee to a state campaign committee had not been authorized under federal law. In November, 2004, Congress amended the Federal Election Campaign Act, (H.R. 4818, s. 532 (3) and 532 (4), to permit the transfer of a federal candidate’s campaign committee’s funds to the candidate’s state campaign committee, if state law permitted, and subject to the state law’s requirements and restrictions.

Because of Congress’ action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board’s current rule, s. ElBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign

committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

Publication Date: February 3, 2005
Effective Date: February 3, 2005*
Expiration Date: July 3, 2005
Hearing Date: May 18, 2005

* On February 9, 2005, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

Insurance

Rules adopted amending **s. Ins 8.49 Appendix 1**, Wis. Adm. Code, relating to small employer uniform employee application for group health insurance.

Finding of emergency

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

The federal government will be implementing Medicare Part D insurance for prescription drugs effective January 1, 2006, therefore **s. Ins 8.49 Appendix 1** needs to reflect accurately the status of applicants as it relates to Medicare Part D enrollment. Further, also effective January 1, 2006, the federal government requires employers or insurers to provide an employee specific information on how to elect insurance coverage after a qualifying event subsequent to have waived coverage in accordance with 45 CFR 146.117 (c) (1). In order to have these changes in place prior to January 1, 2006, the rule must be promulgated to add these modifications.

These changes include the ability for the employee applicant to indicate that they carry Medicare Part D effective January 1, 2006 and amends one sentence in the notice portion of the wavier section of the application to add information on how an employee following a qualifying event may opt to obtain health insurance coverage after initially waiving insurance coverage through the small employer group health insurance plan.

Publication Date: November 4, 2005
Effective Date: November 4, 2005
Expiration Date: April 3, 2006

Natural Resources (5)

(Fish, Game, etc., Chs. NR 1—)

1. Rules adopted revising **chs. NR 46 and 47**, relating to the administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules that

govern the managed forest law. The state legislature has delegated the appropriate agencies rule-making authority to administer the managed forest law. State statute governing the managed forest law was amended on July 25, 2005 with an initial applicability date of June 1, 2005. This order is designed to bring the administrative code into conformity with the state statutes that govern the managed forest law. Normal rule-making procedures will not allow the establishment of changes necessary to continue processing petitions for managed forest law received from June 1, 2005 to July 1, 2005 (petition deadline). Failure to process these petitions will result in a delay in designation of these lands as managed forest land and a failure to meet statutory deadlines for designation.

Publication Date: October 4, 2005
Effective Date: October 4, 2005
Expiration Date: March 3, 2006
Hearing Date: October 19, 2005
Extension Through: May 1, 2006

2. Rules were adopted amending **s. NR 19.50** relating to hunter education fees.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate fees for safety education courses. The state legislature has delegated to the appropriate agencies rule making authority to regulate and administer these courses. The department must comply with state law. This order is desired to provide necessary funding for continuation of our quality hunter education program. Normal rule-making procedures will not allow the establishment of the changes by September 1. Failure to modify our rules will result in lost revenues and added expense to the hunter education program.

Publication Date: October 3, 2005
Effective Date: October 3, 2005
Expiration Date: March 2, 2006
Hearing Date: October 12, 2005
Extension Through: April 30, 2006

3. Rules were adopted amending **ch. NR 47** relating to relating to master logging certification scholarships.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate and administer grant programs. The State legislature has delegated responsibility for rule-making to the Department of Natural Resources. Normal rule-making procedures will not allow the establishment of the rules in time to allocate funds during this fiscal year. Failure to establish rules during FY06 will result in lost revenues and added expense to the Master Logger Certification program.

Publication Date: November 15, 2005
Effective Date: November 15, 2005
Expiration Date: April 14, 2006
Hearing Date: December 12, 2005
Extension Through: June 12, 2006

4. Rules were adopted amending **ch. NR 25** relating to commercial fishing for lake trout in Lake Superior.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent negotiated amendments to the agreement between the State and the Red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. Failure by the State to do so will not only deprive state fishers of increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

Publication Date: December 15, 2005
Effective Date: December 15, 2005
Expiration Date: May 14, 2006
Hearing Date: January 13, 2006

5. Rules were adopted revising **s. NR 10.25**, relating to the issuance of turkey hunting permits.

Plain Language Analysis

This rule change will allow the department to issue turkey tags remaining after the initial permit drawing in accordance with state statute, which is first-come, first-served. Additionally, this rule updates code language to accurately describe how permits are currently issued (by zone and by time period) and establishes that no person may obtain more than one turkey carcass tag per day.

Exemption from finding of emergency

2005 Wisconsin Act 25, allowed the department to utilize the procedure under s. 227.24, Stats., to promulgate rules implementing s. 29.164, Stats., for the period before the date on which permanent rules take effect, but may not exceed the period authorized under s. 227.24 (1) (c) and (2), Stats. Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), Stats., the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Publication Date: February 13, 2006
Effective Date: March 1, 2006
Expiration Date: July 29, 2006
Hearing Date: April 10, 2006

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

Rules adopted revising **ch. NR 326**, relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

Finding of emergency

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

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004*
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

Revenue (2)

1. Rule adopted revising **s. Tax 2.50** and creating **s. Tax 2.502**, relating to the computation of the apportionment fraction by multistated public utilities and telecommunications companies.

Finding of emergency

The Department of Revenue finds that an emergency exists and that a rule order is necessary for the immediate

preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to prescribe the method to be used for apportioning the apportionable income of the following business entities:

- interstate public utilities, other than telecommunications companies, and
- interstate telecommunications companies.

It is necessary to promulgate this rule order to provide the method of apportionment to be used by interstate public utilities.

Publication Date: December 5, 2005
Effective Date: December 5, 2005
Expiration Date: May 4, 2006
Hearing Date: February 27, 2006

2. Rules adopted revising **chs. Tax 1 and 2**, relating to electronic funds transfer, information returns and wage statements.

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

Section 71.775, Stats., requires pass-through entities to file and pay withholding tax on the income allocable to their nonresident members. The department has determined that in order to administer this tax in a cost effective manner, it is necessary to require pass-through entities to file and pay the tax by electronic means. The department has also determined that, in the interest of cost effectiveness, a requirement to file Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, should also be put in place.

It is necessary to promulgate this rule order to remove the threat of revenue loss to the state as a result of pass-through entities filing or paying withholding tax or employers filing Form WT-7 by other than electronic means.

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

Publication Date: December 28, 2005
Effective Date: December 28, 2005
Expiration Date: May 27, 2006
Hearing Date: March 15, 2006

Technical College System Board

Rules were adopted creating **ch. TCS 17**, relating to training program grants.

Finding of emergency

The Wisconsin Technical College System Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting an emergency is:

The 2005 Wis. Act 25 (the 2005–2007 biennial budget bill) created the training program grants under Wis. Stats. §§ 20.292 (1) (eh) and 38.41. An annual appropriation of

\$1,000,000 GPR in was established. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state's economic vitality and health.

The Act requires the WTCS Board to promulgate rules to implement and administer the awarding of these grants. The Board has begun the permanent rule making process for establishing administrative rules for these grants, but cannot complete the required public hearing and review of these rules prior to the middle of the fiscal year. Therefore, to ensure that business in need of skills training and other education may access these services as soon as possible and that appropriated funds are distributed to technical college districts for this purpose, emergency administrative rules must be established immediately.

Publication Date: October 7, 2005
Effective Date: October 7, 2005
Expiration Date: March 6, 2006
Hearing Date: January 4, 2006
Extension Through: May 4, 2006

Transportation

A rule adopted amending **s. Trans 325.02**, relating to motor carrier safety regulations.

Finding of emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is on October 1, 2005 the new hours-of-service regulations became effective. The new regulations apply to drivers and carriers transporting property and passengers by commercial vehicles in interstate commerce. It is imperative the industry operates under a single set of regulations. Additionally, the Commercial Vehicle Safety Alliance out-of-service criteria is directly formulated to the new hours-of-service. Also pursuant to 49 CFR 350.331(d), States are required to adopt compatible laws or rules to remain eligible for Motor Carrier Safety Assistance Program funding. Currently, Wisconsin receives approximately \$4 million in such funding and that funding could be in jeopardy if Wisconsin does not implement these changes immediately. The Motor Carriers Association has urged the Department to implement these changes as it will help ensure uniformity and increased highway safety.

Publication Date: December 1, 2005
Effective Date: December 1, 2005
Expiration Date: April 30, 2006
Hearing Date: February 13, 2006

Workforce Development (Labor Standards, Chs. DWD 270–279)

Rules adopted revising **ss. DWD 274.015 and 274.03** and creating **s. DWD 274.035**, relating to overtime pay for employees performing companionship services.

Finding of emergency

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

On January 21, 2004, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for nonmedical home care companion employees of an agency as part of ch. DWD 274.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005, 103.02, and 227.11, Stats.

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that “no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person’s life, health, safety or welfare.” Section 103.01 (3), Stats., defines “place of employment” as “any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel.”

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of “place of employment” and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various governmental bodies. Section DWD 274.015 also provides that the chapter does not apply to employees employed in domestic service in a household by a household.

Section 103.02, Stats., directs that the “department shall, by rule, classify such periods of time into periods to be paid for at the rate of at least one and one-half times the regular rates.” Under s. DWD 274.03, “each employer subject to this chapter shall pay to each employee time and one-half the regular rate of pay for all hours worked in excess of 40 hours per week.” Section DWD 274.04 lists 15 types of employees who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for-profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03. “Companionship services” is defined as those services which provide fellowship, care, and protection for a

person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term “companionship services” does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

This order also repeals and recreates the applicability of the chapter section and the overtime section to write these rules in a clearer format. There is no substantive change in these sections.

Publication Date: March 1, 2004
Effective Date: March 1, 2004*
Expiration Date: July 29, 2004

* On April 28, 2004, the Joint Committee for Review of Administrative Rules suspended s. DWD 274.035 created as an emergency rule.

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

Rules adopted amending ss. **DWD 290.155 (1) and DWD 293.02 (1) and (2)**, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Finding of emergency

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

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. The adjustment of the thresholds for the application of the payment and performance assurance requirements avoids imposing an additional administrative burden on contractors for the same reason. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the rule-making process.

Publication Date: December 27, 2005
Effective Date: January 1, 2006
Expiration Date: May 31, 2006
Hearing Date: February 15, 2006

Scope statements

Insurance

Subject

Objective of the rule. To revise the Injured Patients & Families Compensation Fund (Fund) Peer Review Surcharge rates.

Policy analysis

The peer review surcharge rates are established in relation to the number of and dollar amount of claims paid on behalf of a health care provider. Pursuant to s. 655.27 (3) (a) 2m., Wis. Stats., health care providers with claim payment experience that exceeds the limits established by rule are subject to a surcharge which may result in an increase in the amount of assessment they pay to the Fund. The current surcharge rates were established in 1987 based upon paid claims data at that time. The Fund's consulting actuary performed a study in 2004 and determined that these rates are no longer appropriate and have developed new rates based upon more recent claim payment data.

Statutory authority

The statutory authority for this rule is s. 601.41 (3), and 655.27 (3)(bg), Wis. Stats.

Staff time required

40 hours estimated state employee time to promulgate this rule.

Comparison with federal regulations

There is no existing or proposed federal regulation addressing any medical malpractice fund like the Wisconsin Injured Patients & Families Compensation Fund.

Entities affected by the rule

Pursuant to Ins. 17.285 (2) (d), Wis. Adm. Code, this rule will affect all physicians and certified registered nurse anesthetists subject to Chapter 655 Wis. Stats. that have paid claims experience that exceeds the thresholds established by this rule.

Medical Examining Board

Subject

Wis. Admin. Code s. Med 1.06 (3), relating to the 7 year time limit for completion of the three qualifying examinations required of M.D. applicants.

Policy analysis

Objective of the rule. The Medical Examining Board would like to recognize problems related to successfully completing all three steps of the United States Medical Licensing Examination (USMLE) within 7 years by allowing 10 years for successful completion of all three steps for applicants to be specified in the rule. The extension would apply to applications received on or after the effective date of this rule.

Current rules provide that applicants who have completed a standard M.D. training program shall complete all three steps of the USMLE sequence within 7 years from the date upon which the applicant first passes a step, either step 1 or

step 2. The 7 year rule results in applicants failing to obtain passage of all three steps within the 7 year period. The board decided to propose a rule change to allow more time for successful completion of the three steps from 7 years to 10 years for applicants to be specified in the rule. The board may also wish to revise other rules relating to the 7 year rule.

Comparison with federal regulations

There is no existing or proposed federal regulation.

Entities affected by the rule

Medical board licensees, Wisconsin medical school residency programs, and the Department of Regulation and Licensing.

Statutory authority

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

Staff time required

300 hours.

Public Service Commission

Subject

Objective of the rule. This rulemaking will delete Wis. Admin. Code chs. PSC 7 and 172, and perhaps delete and/or amend other obsolete or outdated rules.

Policy analysis

None. The statute that Wis. Admin. Code ch. PSC 7 implements has been repealed and Wis. Admin. Code ch. PSC 172 was nullified by the Wisconsin Telecommunications Act.

Comparison with federal regulations

Not applicable.

Statutory authority

Wis. Stats. ss. 196.02 (3) and 227.11 (2).

Staff time required

The Commission estimates less than 40 hours of Commission staff time will be required in this rulemaking.

Entities affected by the rule

The rulemaking could affect public utilities, as defined in Wis. Stats., s. 196.01 (5), but it is expected that no entities will be affected since this rulemaking deals with obsolete and outdated rules.

Transportation

Subject

Objective of the rule. This rule making will amend ch. Trans 103 which administratively interprets ch. 351, Stats., and establishes Department policy and procedure relating to habitual traffic offenders and repeat habitual traffic offenders.

Policy analysis

Chapter 351, Stats., was amended by 2005 Wis. Act 25 to alter the definition of "habitual traffic offender" as used in that chapter. Persons who commit 12 or more violations of ch. 346, Stats., are deemed "Habitual Traffic Offenders" under

the amended law. This rule making is intended to review Ch. Trans 103, to assure its consistency with Ch. 351, Stats., and to “clean up” any other technical flaws in the existing regulation.

Comparison with federal regulations

Not applicable.

Entities affected by the rule

As a result of state law changes, the Department has implemented a new method of calculating Habitual Traffic Offender status. The rule change will impact the same groups already affected by the law change, persons who commit multiple traffic offenses and courts that hear appeals of WisDOT revocation orders issued under Ch. 351, Stats., and Ch. Trans 103.

Statutory authority

Ch. 351, Stats.

Staff time required

State employees should not need to spend more than about 10 hours on modifications to this rule.

Transportation

Subject

Objective of the rule. This rule making will amend ch. Trans 138, relating to dealer facilities, records and licenses, to clarify that dealers who do not have a business facility in Wisconsin may not conduct sales at temporary locations in this state.

Policy analysis

Ch. Trans 138 generally requires automobile dealers to maintain business facilities in this state. Such dealers may conduct sales at temporary locations, such as fairs or auto shows. Ch. Trans 138 was recently amended to exempt out-of-state dealers who sell vehicles to Wisconsin residents via the internet from the requirement of maintaining a Wisconsin business facility. This proposed rule making would clarify that an out-of-state dealer lacking Wisconsin business facilities, such as an internet seller, would not be able to conduct sales at temporary locations in Wisconsin. To conduct in-person sales within the state of Wisconsin, a dealer would be required to have Wisconsin business facilities.

Comparison with federal regulations

N/A

Entities affected by the rule

Wisconsin licensed motor vehicle dealers located within and outside of the state. Wisconsin consumers.

Statutory authority

Ch. 218, Stats.

Staff time required

20 hours.

Veterinary Examining Board

Subject

Informed consent and recordkeeping.

Policy analysis

Objective of the rule. Create requirements for a veterinarian to provide informed consent to clients. Provide an avenue to amend the recently enacted continuing education rule for veterinarians and veterinary technicians as needed.

Currently, there is no explicit requirement for a veterinarian to provide informed consent to clients. The purpose of such a requirement is to allow the client to make an informed decision about recommended patient treatment, alternate viable treatments and risks or complications of the procedure. Similarly, there is no requirement to document informed consent in the patient record among the list of information items the patient record must contain. Without an informed consent requirement and a provision requiring its documentation, the practice of informed consent is more likely to be ignored, or below minimum competence, and cases where an informed consent violation may be found are difficult to prosecute.

The department may receive feedback in the course of processing renewal applications that points to the necessity of clarification or revision of the recently enacted continuing education rule. Only minor changes are anticipated.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

Comparison with federal regulations

None.

Entities affected by the rule

The Department of Regulation and Licensing and veterinary practitioners.

Staff time required

200 hours.

Submittal of rules to legislative council clearinghouse

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

Dentistry Examining Board

On February 24, 2006, the Dentistry Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), 447.02 (1) (d) and (2) (d) and (e) Stats.

The proposed rule-making order relates to the definition of “local anesthesia” administered by dental hygienists.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 3, 2006 at 9:00 a.m. in Room 121C at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

Pamela Haack, Paralegal
Office of Legal Counsel
(608) 266-0495
Pamela.haack@drl.state.wi.us

Phone: 608-266-5388

Fax: 608-267-7119

engleda@dhfs.state.wi.us

For small business considerations contact:

Rosie Greer

608-266-1279

greerrj@dhfs.state.wi.us

For rules processing information contact:

Rosie Greer

608-266-1279

greerrj@dhfs.state.wi.us

Health and Family Services

On March 1, 2006, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Chapter HFS 148, rules relating to cancer drug repository, and affecting small businesses.

Federal statutes or regulations which require adoption of or are relevant to the substance of proposed rules: None known.

Court decisions directly relevant to the proposed rule: None known.

Agency Procedure for Promulgation

Public hearings: The Department will hold one public hearing on April 4, 2006 from 9:00 a.m. to 11:00 a.m., at 1 W. Wilson St., Room 950B, in Madison, Wisconsin. The notice of public hearing is posted on the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>.

Contact Person

Names and phone numbers of agency contacts:
For substantive questions on rules contact:
Doug Englebert, R.Ph.
Pharmacy Practice Consultant
Provider Regulation and Quality Improvement Section
Room 950, 1 West Wilson St.
Madison, WI 53701

Natural Resources

On February 16, 2006, the Department of Natural Resources Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to deer hunting as it pertains to the control and eradication of chronic wasting disease (CWD).

Agency Procedure for Promulgation

Public hearings are required and will be held on March 13, 14, 15 and 17, 2006.

Contact Person

Kurt Thiede

Bureau of Wildlife Management

(608) 267-2452

Natural Resources

On February 16, 2006, the Department of Natural Resources Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to deer and turkey hunting, hunting and trapping techniques, permit and license issuance, dog training and learn-to-hunt programs.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 10, 2006.

Contact Person

Kurt Thiede

Bureau of Wildlife Management

(608) 267-2452

Natural Resources

On February 16, 2006, the Department of Natural Resources Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to fishing on the inland, outlying and boundary waters of Wisconsin.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 10, 2006.

Contact Person

Joe Hennessy
Bureau of Fisheries Management and Habitat Protection
(608) 267-9427

Public Service Commission

On February 28, 2006, the Public Service Commission of Wisconsin submitted a proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

Proposed repeal of chapter PSC 98, Wis. Adm. Code – rules within meaning of and pursuant to s. 300.304 of the regulations of the price commission.

Agency Procedure for Promulgation

Since this brings our rule in conformity with existing law, no hearing is scheduled.

Contact Person

If you have any internal processing questions, please call Leon Swerin at (608) 267-3589. Other questions should be directed to John Lorence at (608) 266-8128.

Regulation and Licensing

On February 24, 2006, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 227.11 (2) and 480.08 (6), Stats.

The proposed rule-making order relates to the 2006 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

Agency Procedure for Promulgation

A public hearing is not required. A 30-day Notice of Proposed Rule-Making, as set forth in s. 227.16 (2) (e), Stats., has been filed with the Revisor of Statutes office and will be published in the Wisconsin administrative register.

Contact Person

Pamela Haack, Paralegal
Office of Legal Counsel
(608) 266-0495
Pamela.haack@drl.state.wi.us

Regulation and Licensing

On February 24, 2006, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 227.11 (2) and 480.08 (6), Stats.

The proposed rule-making order relates to educational programs for auctioneers.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 18, 2006 at 9:30 a.m. in Room 121A at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

Pamela Haack, Paralegal
Office of Legal Counsel
(608) 266-0495
Pamela.haack@drl.state.wi.us

Rule-making notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on an emergency rule relating to a poultry flock certification program. This emergency rule authorizes more cost-effective disease monitoring options for small poultry producers who cannot feasibly comply with requirements under the national poultry improvement plan, which is designed for large commercial operations. This rule will allow small poultry producers to sell, move and exhibit poultry, and will increase poultry disease control and monitoring in this state.

DATCP will hold one hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until Thursday, April 6, 2006, for additional written comments. Comments may be sent to the Division of Animal Health at the address below or by e-mail to: hearingcommentsAH@datcp.state.wi.us.

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

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

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

Hearing impaired persons may request an interpreter for the hearing. Please make reservations for a hearing interpreter by March 22, 2006, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearing.

Hearing Date and Location

Friday, **March 31, 2006** 12:30 p.m. to 1:30 p.m.

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room

Madison, WI 53708

Handicapped accessible

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

This emergency rule authorizes more cost-effective disease monitoring options for small poultry producers who cannot feasibly comply with requirements under the national poultry improvement plan, which is designed for large commercial operations. This rule will allow small poultry

producers to sell, move and exhibit poultry, and will increase poultry disease control and monitoring in this state.

Statutory Authority

Statutory Authority: ss. 93.07 (1) and (10), 95.18, 95.19, 95.20, 95.22, 95.45, 95.51, 95.57, and 95.68, Stats.

Statute Interpreted: s. 93.07 (10), 95.18, 95.19, 95.20, 95.22, 95.45, 95.51, 95.57, and 95.68, Stats.

DATCP has broad general authority to adopt rules interpreting statutes under its jurisdiction (*see* s. 93.07(1), Stats.). DATCP is specifically authorized to adopt rules to protect the health of animals in this state, and to prevent, control and eradicate communicable diseases among animals. This emergency rule creates a new poultry flock certification program for small poultry producers, in order to provide more cost-effective disease control and monitoring.

Background

The Wisconsin department of agriculture, trade and consumer protection ("DATCP") administers Wisconsin's animal health and disease control programs, including programs to prevent diseases in poultry. Under current DATCP rules, all poultry and farm-raised game birds imported or moved for purposes of breeding or hatching must comply with the national poultry improvement plan, or an equivalent program.

Under current DATCP rules, poultry and farm-raised game birds exhibited at fairs, swap meets and like events must be tested prior to the event, or must originate from a flock enrolled in the national poultry improvement plan. This national plan requires routine flock inspections, and yearly testing of all sexually mature birds. Plan enrollment fees vary by flock size and type, and range from \$20 to \$200. The flock owner must also pay all testing costs.

The national poultry improvement plan is designed for large commercial operations, and compliance costs for small poultry producers may be prohibitive. Small producers who cannot afford to enroll in the national plan are effectively prohibited from selling, moving or exhibiting their birds in many cases.

This rule provides new, more cost-effective disease monitoring options for small poultry producers. This will allow more small producers to sell, move and exhibit their birds. It will encourage more disease testing and monitoring by small producers, and will reduce illegal movement and exhibition of birds. These changes will improve the overall control and monitoring of poultry diseases in this state, and will help to protect human and animal health. DATCP is adopting this rule as an emergency rule so that the improvements can be implemented as soon as possible, and in time for the 2006 fair and exhibition season.

Key Rule Changes

Under this rule, a flock owner who is not enrolled in the national poultry improvement program may nevertheless sell or move poultry for breeding, hatching or exhibition if the flock is enrolled as a *Wisconsin tested flock* or *Wisconsin associate flock*.

A flock may be enrolled as a *Wisconsin tested flock* if the flock owner tests annually for *Salmonella pullorum*, fowl typhoid and, in the case of turkeys, *Mycoplasma gallisepticum*. A flock may be enrolled as a *Wisconsin associate flock* if it consists entirely of birds obtained from a

Wisconsin tested flock. There is no charge to enroll in either program. DATCP will issue certificates that flock owners can use to document enrollment.

Fiscal Impact

This rule will have no fiscal impact on local government and an insignificant impact on DATCP. DATCP will incur added staff and administrative costs to administer the new poultry flock certification program, but expects to absorb the additional workload with existing staff and appropriations. There is no fee for flock owners to enroll in the program.

Business Impact

This rule affects poultry producers, many of which are “small businesses.” This rule will have a positive impact on small poultry producers, and will have little or no effect on large producers. Current rules prohibit the sale or distribution of poultry or eggs, for breeding, hatching or exhibition, unless they originate from flocks enrolled in the national poultry improvement plan and meet disease-free classification standards under that plan. However, the national poultry improvement plan is primarily designed for large poultry producers, and may not be cost-effective for small producers. This rule provides cost-effective disease monitoring options that will provide greater market access for small producers.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but has proposed a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Federal and Surrounding State Programs

Federal Programs

DATCP administers animal disease control programs in cooperation with the United States department of agriculture, animal and plant health inspection service (“the federal bureau”). DATCP and the federal bureau cooperate in the administration of the national poultry improvement plan, which is governed by 9 CFR 145 and 147. The plan is primarily designed for large poultry producers, and may be cost-prohibitive for small producers.

Plan participation is voluntary, but poultry producers must enroll their flocks in order to move birds in interstate commerce. Current Wisconsin rules further limit movement and exhibition of poultry within this state, except from enrolled flocks. This rule provides more cost-effective alternatives for small poultry producers, giving them more market access.

Surrounding State Programs

Poultry programs in surrounding states are broadly comparable to those in Wisconsin.

All surrounding states (Iowa, Michigan, Minnesota, and Illinois) require testing of poultry for *Salmonella pullorum*, fowl typhoid and, in the case of turkeys, *Mycoplasma gallisepticum*. For in-state movement, for purposes other than exhibition, poultry other than turkeys must originate from flocks that have a *pullorum*-typhoid clean rating under the national poultry improvement plan. Turkeys must be tested for *Mycoplasma gallisepticum* according to the national poultry improvement plan.

Poultry testing requirements for exhibition vary slightly between states. Generally speaking, exhibited poultry must originate from flocks that comply with the national poultry improvement plan, or they must test negative for *pullorum*-typhoid (and, in the case of turkeys, for *Mycoplasma gallisepticum*) within 90 days of the exhibition.

DATCP Contact

Questions and comments related to this rule may be directed to:

Melissa Mace

Department of Agriculture, trade and Consumer Protection
P.O. Box 8911

Madison, WI 53708-8911

Telephone (608) 224-4883

E-Mail: hearingcommentsAH@datcp.state.wi.us

Notice of Hearing Dentistry Examining Board [CR 06-016]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Dentistry Examining Board in ss. 15.08 (5) (b), 227.11 (2), 447.02 (1) (d) and (2) (d) and (e), Stats., and interpreting s. 447.01 (3) (g), Stats., the Dentistry Examining Board will hold a public hearing at the time and place indicated below to consider an order to renumber s. DE 7.02; and to create s. DE 7.02 (2), relating to the definition of “local anesthesia” administered by dental hygienists.

Hearing Date, Time and Location

Date: May 3, 2006

Time: 9:00 a.m.

Location: 1400 East Washington Avenue
Room 121C
Madison, Wisconsin

Appearances at the Hearing

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 Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by May 15, 2006, to be included in the record of rule-making proceedings. Analysis prepared by the Department of Regulation and Licensing.

Analysis

Statutes interpreted: Section 447.01 (3) (g), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2), 447.02 (1) (d) and (2) (d) and (e), Stats.

Explanation of agency authority: Section 447.02 (2) (d), Stats., authorizes the Dentistry Examining Board to promulgate rules relating to agents that may be administered by a dental hygienist.

Related statute or rule: There are no statutes or rules related other than those listed above.

Plain language analysis: This proposed rule-making order will exempt subgingival, local anesthetics administered by applicator from the educational requirements of Chapter DE 7, which currently apply to dental hygienists who administer local anesthesia by injection. With the exception, the 10 hours of didactic and 11 hours of clinical education would not be required if the dental hygienist limits administration of local anesthetics to applicators.

A new type of subgingival, local anesthesia applied by applicator, not by injection, is available is being marketed in Wisconsin. The current rule concerning certification of dental hygienists to administer local anesthesia does not explicitly

contemplate local anesthetics administered in this manner, so a definition of “local anesthesia” is being created to clarify educational requirements for dental hygienists who apply local, subgingival anesthesia by applicator.

SECTION 1 renumbers DE 7.02.

SECTION 2 creates a definition for “local anesthesia” to except drugs administered topically or by applicator from dental hygienists’ educational requirements for the administration of local anesthesia.

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation for summary and comparison.

Comparison with rules in adjacent states:

Illinois: No board decision. To consider week of 4/11/05.

Iowa: No board decision.

Michigan: No board decision.

Minnesota: Treated the same as any other subgingival medicament.

Summary of factual data and analytical methodologies:

The Dentistry Examining Board discussed how chapter DE 7 applies to Oraqix, a new medicament that is administered via a surface applicator rather than by injection. In considering the rule as currently written, the board decided the rule is not clear as applied to the new medicaments because it was written to require training for administering injection of local anesthetics. The board also decided that because of the recent introduction of the product type, the rule did not contemplate training requirements necessary to administer it. The board decided by consensus that a course requirement for local anesthetics delivered via surface applicators should not be subject to the course requirement for injections.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

This proposed rule will impact all dental hygienists licensed in Wisconsin. There are no small businesses affected by this rule that meet the statutory definition contained in s. 227.114 (1), Stats. The certification of no impact on small business is based on the fact that a substantial number of the 4,886 total active licensed hygienists work as employees of a dentist as defined by the practice limitation in s. 447.06, Stats. The proposed rule does not include any additional reporting or bookkeeping requirements. The proposed rule requires dental hygienists to obtain additional professional skills related to coursework for providing local anesthetics delivered via surface applicators.

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.

Anticipated costs incurred by private sector:

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

Fiscal Estimate

The proposed rule will have no impact on the department’s funds.

Effect on Small Business

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 or by calling (608) 266–8608.

Agency Contact

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. Telephone: (608) 266–0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission: 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 53708–8935. Email pamela.haack@drl.state.wi.us. Comments must be received on or before May 15, 2006, to be included in the record of rule–making proceedings.

TEXT OF RULE

SECTION 1. DE 7.02 is renumbered DE 7.02 (1).

SECTION 2. DE 7.02 (2) is created to read:

DE 7.02 (2) “Local anesthesia” as used in this chapter means a drug administered other than topically or by applicator for the elimination of sensation, especially pain, in one part of the body. “Local anesthesia” includes medication administered by regional injection.

Notice of Hearing Health and Family Services [CR 06–018]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) and 255.056 (2) and (7), Stats., and interpreting ss. 255.05, Stats., the Department of Health and Family Services proposes to amend ch. HFS 148 (title), ss. HFS 148.01, 148.02, 148.03 (1) to (3) and (13), 148.04 (1), (2) (a) (intro), (b) and (note), (3) and (note), 148.05, 148.06 (title), (1) (intro), (2) (a) (title) and (intro), (a) 1., (b) (intro) and (title), (b) 3. and (note), (3) (intro), (4) and (5), 148.07 (2), (3), (4) (c) and (4) (c) (note), 148.08 and 148.09, and 148.11 (1) and (2) (b), and to create s. HFS 148.03 (3m) and (14m), relating to the cancer drug repository program authorized under s. 255.056, Stats., and affecting small business.

Hearing Date(s) and Location(s)

Date and Time:

Tuesday, April 4, 2006

9:00 AM – 11:00 AM

Location:

1 West Wilson

Room 950 B

Madison, WI

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

Place Where Written Comments May be Submitted

Written comments may be submitted at the public hearing or submitted to the Department using the Wisconsin Administrative Rule Website at: <http://adminrules.wisconsin.gov>. Written comments may also be sent to:

Doug Englebert, R.Ph.

DHFS – Bureau of Quality Assurance
 Room 950 1 West Wilson St.
 Madison, WI 53711
 Ph. 608-266-5388; Fax: 608-267-7119
 Engleda@dfhs.state.wi.us

Deadline for Comment Submission

The deadline for submitting comments to the Department is 4:30 p.m. on April 12, 2006.

Analysis Prepared by the Department of Health and Family Services

The Department currently manages the cancer drug repository program under s. 255.056, Stats., and ch. HFS 148, which allows pharmacies and medical facilities, including hospitals, and clinics or offices used by physicians to accept donated, unused cancer drugs and supplies for dispensation to eligible individuals. 2005 Wisconsin Act 16 expanded the cancer drug repository program effective January 1, 2006 to allow drugs and supplies for the treatment of chronic diseases to be donated and dispensed under the program. This expansion requires the Department to modify ch. HFS 148, to reflect the changes made to s. 255.056, Stats.

Through this rulemaking order, the Department proposes to modify ch. HFS 148 to insert the term “chronic disease” where appropriate. The Department also proposes to remove the alternative \$15 handling fee prescribed under s. HFS 148.08 to avoid any conflicts that may occur between this alternative amount and the Medicaid dispensing fee which is used as the basis of the handling fee amount that can be charged to persons eligible to receive drugs and supplies under the program.

Initial Regulatory Flexibility Analysis

The Department currently manages the cancer drug repository program under s. 255.056, Stats., and ch. HFS 148, which allows pharmacies and medical facilities, including hospitals and clinics or offices used by physicians to elect to accept donated, unused cancer drugs and supplies for dispensation to eligible individuals. 2005 Wisconsin Act 16 expanded the cancer drug repository program effective January 1, 2006 to allow drugs and supplies for the treatment of chronic diseases to be donated and dispensed under the program. This expansion requires the Department to amend ch. HFS 148, to reflect the changes made to s. 255.056, Stats.

Through this rulemaking order, the Department will modify ch. HFS 148 to reflect the changes in s. 255.056, Stats. The Department also proposes to remove the alternative \$15 handling fee prescribed under s. HFS 148.08 to avoid any conflicts that may occur between this alternative amount and the Medicaid dispensing fee which is used as the basis of the handling fee amount that can be charged to users of the program.

The proposed expansion of the drug repository program will directly impact current and potential pharmacy or medical facility participants in the drug repository program, including those that meet the definition of small business under s. 227.114 (1), Stats. Sixteen pharmacies and no medical facilities currently participate in the cancer drug repository program. Analysis of the 2002 Economic Census (Wisconsin data) for the pharmacy industry (NAICS Code 44611), suggests that most of the pharmacies, including the current 16 pharmacy participants, are small businesses as defined under s. 227.114 (1), Stats. Medical facilities, as defined under s. 943.145, Stats., are hospitals, and clinics or offices of physicians licensed under ch. 448, Stats. An

analysis of the 2002 Economic Census (Wisconsin data) for these facilities (NAICS Codes 6211– offices of physicians; 622 – hospitals; 621491– HMO medical centers; and 621493 – freestanding ambulatory surgical and emergency centers) suggests that the average facility does not meet the definition of small business under s. 227.114 (1), Stats.

Current participating entities (and potential participants) may incur additional costs for inspection, storage, dispensing, distribution, and destruction of expired donated drugs or supplies of the additional drugs and supplies. To cover these costs, entities may charge a handling fee that is up to 300% of the Medicaid dispensing fee (which is currently \$4.38) or \$13.14 per prescription. This amount is comparable to what non-participating pharmacies receive for prescription dispensing fees. A 2002 study commissioned by the Wisconsin Medicaid program found that in the year 2000, dispensing fees, which included the cost of packaging, labeling, computer systems, salaries, rent, utilities, etc., averaged between \$6.95 and \$7.35 per prescription with expected annual increases between 6 and 12 percent. Adjusting for cost increases, the Department determined that in 2005, dispensing fees could range from \$9.30 to \$11.56 per prescription.

If a participating entity chooses not to collect a handling fee, that entity will bear the costs of inspection, storage, dispensing, distribution, and destruction of expired donated drugs or supplies.

The proposed rules do not impose form requirements or requirements for reporting or recordkeeping, or performance, operational or design standards.

The expansion of the drug repository program to include chronic diseases drugs and supplies and amend the handling fee provision prescribed under s. HFS 148.08, will not have a significant economic impact on current or potential pharmacy or medical facility participants in the drug repository program, including those that meet the definition of small business under s. 227.114 (1), Stats.

Small Business Regulatory Coordinator

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

Fiscal Estimate

The proposed rules will not affect state or local government costs or have a significant economic impact on pharmacies or medical facilities. The proposed rules will affect only those pharmacies and medical facilities that elect to participate in the drug repository program, including those that meet the definition of small business under s. 227.114 (1), Stats.

Obtaining Copies of Rules and Fiscal Estimate

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

Contact Person

Doug Englebert, R.Ph.
 DHFS – Bureau of Quality Assurance
 Room 950 1 West Wilson St.
 Madison, WI 53711
 Ph. 608-266-5388; Fax: 608-267-7119
 Engleda@dfhs.state.wi.us

**Notice of Hearing
Regulation and Licensing
[CR 06-015]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) and 458.24, Stats., and interpreting ss. 458.24 and 458.26 (3) (b), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Regulation and Licensing will adopt the following rules as proposed in this notice, without public hearing unless, within 30 days after publication of this notice, on **March 15, 2006**, the Department of Regulation and Licensing is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Analysis prepared by the Department of Regulation and Licensing.

Statute interpreted: Sections 458.24 and 458.26 (3) (b), Stats.

Statutory authority: Sections 227.11 (2) and 458.24, Stats.
Explanation of agency authority

The Department of Regulation and Licensing is authorized under ss. 227.11 (2) and 458.24, Stats., to promulgate rules establishing the standards for appraisal practice for licensed and certified appraisers.

Related statute or rule: There are no related statutes or rules other than those listed above.

Plain language analysis: In this proposed rule-making order, the Department of Regulation and Licensing proposes to amend ch. RL 87 Appendix I, which incorporates by reference the 2005 edition of the Uniform Standards of Professional Appraisal Practice (USPAP). Currently, the 2005 edition of USPAP states that the effective date of the publication is from January 1, 2005 to December 31, 2005. The department proposes to amend the rule to state that the effective date of the publication is from January 1, 2005 to June 30, 2006. The department also proposes to incorporate by reference the 2006 edition of USPAP.

SECTION 1. The department proposes to amend Appendix I, which incorporates by reference the 2005 edition of USPAP, to change the expiration date from December 31, 2005 to June 30, 2006. The department also proposes to amend Appendix I to incorporate by reference the 2006 edition of USPAP.

As required under s. 227.11, Stats, the department has obtained the consent of the attorney general and revisor of statutes to the incorporation of the 2005 and the 2006 editions of USPAP into the rules by reference.

Summary of, and comparison with, existing or federal regulation

The Federal Reform, Recovery, and Enforcement Act ("FIRREA"), 12 U.S.C. 3331 et seq., (Title XI) was enacted in 1989. Under FIRREA, insured financial institutions and insured credit unions are required to obtain the services of a state certified or licensed appraiser for appraisals conducted in connection with "federally related transactions."

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council is authorized under FIRREA to monitor the requirements established by states for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions. *21 USC 3333; Appraisal Subcommittee – Policy Statements Regarding State Certification and Licensing of Appraisers.*

Under FIRREA, real estate appraisals performed in connection with federally related transactions are required to be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation. *21 USC 3339; Appraisal Subcommittee – Policy Statements Regarding State Certification and Licensing of Appraisers, Statement 3.*

The appraisal standards promulgated by the ASB are contained in the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP is available on the Appraisal Foundation's website at:

<http://www.appraisalfoundation.org>.

Comparison with rules in adjacent states:

Under FIRREA, all states, including Illinois, Iowa, Michigan and Minnesota, must assure that certified appraisers comply with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board. In Wisconsin, USPAP has been incorporated by reference in Appendix I to ch. RL 87, Code. See also, s. 458.24, Stats.

Summary of factual data and analytical methodologies:

No study resulting in the collection of factual data was used relating to this rule. The primary methodology for revising the rule is the board's analysis and determination that a rule change is necessary.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The proposed rule would change the standards for appraisal practice for licensed and certified appraisers licensed in Wisconsin. There are 1,940 licensed appraisers, 1,454 certified residential appraisers, and 1,375 certified general appraisers who are licensed in Wisconsin and would have to comply with the standards. Of the licensed appraisers in Wisconsin, a majority of them probably work in small businesses.

Under the Federal Reform, Recovery and Enforcement Act (FIRREA), all states must assure that certified appraisers comply with the Uniform Standards of Appraisal Practice that are promulgated by the Appraisal Standards Board. This will be the latest update of practice standards and will not have an effect on small business.

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.

Fiscal Estimate

The proposed rule will have no impact on the department's funds.

Anticipated costs incurred by private sector:

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

Effect on small business:

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, or by calling (608) 266-8608.

Agency Contact

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495.

Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935; email pamela.haack@drl.state.wi.us. Comments must be received on or before March 25, 2006 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Ch. RL 87, Appendix I is amended to read:

APPENDIX I

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

The 2005 edition of the Uniform Standards of Professional Appraisal Practice (USPAP) is hereby incorporated by reference into this Appendix. The 2005 edition of USPAP is effective January 1, 2005 to ~~December 31, 2005~~ June 30, 2006.

After January 1, 2005, copies of the 2005 edition of USPAP may be purchased from the Appraisal Standards Board of the Appraisal Foundation, ~~1029 Vermont Avenue~~ 1155 15th Street, N.W., Suite 900 1111, Washington, D.C. ~~20005-3517~~ 20005, and (202) 347-7722. After January 1, 2005, copies of the 2005 edition of USPAP may also be obtained, at no charge, from the Appraisal Foundation's website at <http://www.appraisalfoundation.org>. The direct link to the electronic copy of the 2005 and prior year publications of the Uniform Standards of Professional Appraisal Practice is: http://www.appraisalfoundation.org/html/standards.asp?FileName=current_uspap.

The 2006 edition of the Uniform Standards of Professional Appraisal Practice (USPAP) is hereby incorporated by reference into this Appendix. The 2006 edition of USPAP is effective July 1, 2006 to December 31, 2007.

After July 1, 2006, copies of the 2006 edition of USPAP may be purchased from the Appraisal Standards Board of the Appraisal Foundation, 1155 15th Street, N.W., Suite 1111, Washington, D.C., 20005, (202) 347-7722. After July 1, 2006, copies of the 2006 edition of USPAP may also be obtained, at no charge, from the Appraisal Foundation's website at: <http://www.appraisalfoundation.org>.

Note: As required under s. 227.21, Stats., the attorney general and revisor of statutes have consented to the incorporation by reference of the 2005 edition and the 2006 editions of the Uniform Standards of Professional Appraisal Practice. ~~After January 1, 2005, copies~~ Copies of the 2005 edition and the 2006 editions of the USPAP will be on file in the offices of the department, the secretary of state and the revisor of statutes.

**Notice of Hearing
Regulation and Licensing
[CR 06-014]**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 480.08 (6), Stats., and interpreting s. 480.08 (5) and (6), the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to repeal RL 128.03 (1) (c) and (d); and to amend RL 128.03 (1) (intro.), (a) and (b), the Note following RL 128.04 (1), the Note following RL 128.04 (1m) (e), and

the Note following RL 128.04 (6) (b), relating to educational programs for auctioneers.

Hearing Date, Time and Location

Date: **April 18, 2006**
Time: 9:30 a.m.
Location: 1400 East Washington Avenue
Room 121A
Madison, Wisconsin

Appearances at the Hearing

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 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. Comments must be received on or before April 28, 2006 to be included in the record of rule-making proceedings.

Analysis

Statute interpreted: Section 480.08 (5) and (6), Stats.

Statutory authority: Sections 227.11 (2) and 480.08 (6), Stats.

Explanation of agency authority: The Department of Regulation and Licensing is authorized under s. 480.08 (6), Stats., to promulgate rules establishing requirements and procedures for registered auctioneers to complete continuing education programs or courses of study in order to qualify for renewal.

Related statute or rule: Section 480.08 (5), Stats., which states, in part, that a renewal application for an auctioneer certificate shall be accompanied by proof of completion of continuing education requirements under sub. (6).

Plain language analysis: SECTIONS 1 and 2. Under the current law, in order to renew a registration, an auctioneer must complete 12 hours of continuing education that consists of four specific courses. The subject matter of those courses include: 1) three hours in Wisconsin laws relating to auctioneer ethical and professional conduct; 2) three hours in Wisconsin laws relating to maintenance of records and trust accounts; 3) three hours in federal laws relating to auctioneering and Wisconsin laws other than those described in paragraphs 1) and 2) above, and 4) three hours in certain elective courses that are relevant to the practice and legal requirements of auctioneering.

Except for the three hour ethics course, the department proposes to revise the rules to eliminate the specific subject matter areas or topics identified in the rules. Instead, the department would identify and approve the subject matter areas or topics biennially.

SECTIONS 3, 4 and 5 amend Notes to amend the address of the department and include the department's website.

Summary of, and comparison with, existing or proposed federal regulation: There are no federal laws that govern continuing education requirements for auctioneers. Comparison with rules in adjacent states:

Illinois: Illinois requires auctioneers to complete 12 hours of continuing education, of which six include mandatory core subjects and 6 include elective subjects.

Iowa: Do not regulate auctioneers.

Michigan: Do not regulate auctioneers.

Minnesota: Do not regulate auctioneers.

Summary of factual data and analytical methodologies:

No study resulting in the collection of factual data was used relating to this rule. The primary methodology for revising the rule is the board's analysis and determination that a rule change is necessary.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The proposed rule would change the specific subject matter area requirements for auctioneer continuing education requirements. There are 1,963 auctioneers licensed in Wisconsin. There are also 318 registered auction companies who are licensed in Wisconsin. It should be noted that an individual who is registered as an auctioneer may act as an auction company without having to additionally register as an auction company. Auction companies are not required to take continuing education and would not be affected by this rule change. Of the 1,963 auctioneers licensed in Wisconsin, a majority are probably small business owners.

In order for auctioneers to renew their license, the auctioneer would have to take continuing education courses. Currently, four specific courses are required for continuing education for a total of 12 hours. Except for the ethics course requirement, the remaining course requirements would be in subjects approved by the department biennially. There will be no additional reporting requirements, bookkeeping requirements, or compliance costs. This rule would merely set a standard for review of course content biennially, rather than have permanent course requirements. The same 12 hour requirement would be in place. In the future, auctioneers may have to take classes in different subjects than were required previously. This rule change will not have an effect on small business.

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.

Anticipated costs incurred by private sector:

The Department of Regulation and Licensing anticipates no significant fiscal impact on the private sector.

Fiscal Estimate

The Department of Regulation and Licensing will incur staff costs of \$5,100 annually to approve an expansion of available educational courses.

Effect on small business: 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, or by calling (608) 266-8608.

Agency Contact

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. Telephone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission: 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. Comments must be received on or before April 28, 2006 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. RL 128.03 (1) (intro.), (a) and (b) are amended to read:

RL 128.03 Courses; examinations. (1) COURSES. (intro.) The educational program shall consist of 4 courses and shall cover all of the topics under each paragraph title, be presented during no less than the number of hours stated after each paragraph title, and 12 hours, which shall include:

(a) Course A: 3 Three hours in the Wisconsin laws relating to auctioneer ethical and professional conduct.

(b) Course B: 3 Nine hours in the Wisconsin laws relating to maintenance of records and trust accounts topics pertinent to the practice of auctioneering that shall be approved by the department biennially.

SECTION 2. RL 128.03 (1) (c) and (d) are repealed.

SECTION 3. The Note following RL 128.04 (1) is amended to read:

Note: Applications for educational program and course approval are available from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate Office of Education and Examinations, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 or from the department's website at: <http://drl.wi.gov>.

SECTION 4. The Note following RL 128.04 (1m) (e) is amended to read:

Note: Applications for educational program and course approval are available from the Department of Regulation and Licensing, Office of Education and Examinations, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 or from the department's website at: <http://drl.wi.gov>.

SECTION 5. The Note following RL 128.04 (6) (b) is amended to read:

Note: Applications for approval of instructors are available from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate Office of Education and Examinations, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 or from the department's website at: <http://drl.wi.gov>.

Submittal of proposed rules to the legislature

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

Commerce

(CR 05-110)

Ch. Comm 155, relating to interest on real estate trust accounts.

Health and Family Service

(CR 05-033)

Chs. HFS 105 and 107, relating to dental services under the medical assistance program.

Insurance

(CR 06-002)

Ch. Ins 17, relating to f/y 07 fund fees and mediation panel fees.

Natural Resources

(CR 05-087)

Chs. NR 46 and 47, relating to Managed Forest Law and the Wisconsin Forest Landowner's Grant Program.

Natural Resources

(CR 05-106)

Ch. NR 47, relating to master logging certification scholarships.

Revenue

(CR 04-031)

Ch. Tax 2, relating to the apportionment of income by financial organizations.

Transportation

(CR 06-003)

Chs. Trans 325 and 326, relating to motor carrier safety regulations and motor carrier safety requirements for transportation of hazardous materials.

Rule orders filed with the revisor of statutes bureau

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

Natural Resources (CR 05-072)

An order affecting ch. NR 485, relating to motor vehicle emission limitations and tampering with motor vehicle air pollution control equipment.

Effective 4-1-06.

Natural Resources (CR 05-083)

An order affecting ch. NR 10, relating to deer hunting season at Straight Lake State Park.

Effective 5-1-06.

Natural Resources (CR 05-085)

An order affecting chs. NR 20 and 25, relating to sport fishing for yellow perch in Green Bay and its major tributaries and all other tributary streams, rivers and ditches to Green Bay and to commercial fishing for yellow perch in zone 1 (Green Bay).

Effective 4-1-06.

Natural Resources (CR 05-088)

An order affecting ch. NR 19, relating to establishing hunter education fees.

Effective 4-1-06.

Transportation (CR 05-109)

An order affecting ch. Trans 102, relating to the time period within which a person moving to Wisconsin may operate a motor vehicle under a driver license from his or her previous state of residence.

Effective 5-1-06.

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

First Class

U.S. POSTAGE PAID

Madison, Wisconsin

Permit Number 1369

First Class Mail

Dated Material. Please Do Not Delay!