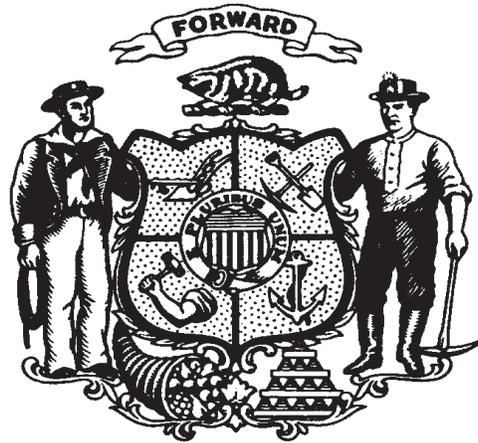


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Emergency rules now in effect

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection

Rules adopted revising **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

Commerce

(Commercial Buildings, Chs. Comm 61–65)

Rules adopted revising **ch. Comm 62**, relating to automatic fire suppression for student housing facilities serving colleges and universities.

Finding of Emergency

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

1. In accordance with sections 101.14 (4) (b) 3., Stats., and the provisions under 2005 Wisconsin Act 78, the department has the responsibility to promulgate rules requiring the installation of automatic fire sprinkler systems in various student housing facilities serving colleges and universities.

2. 2005 Wisconsin Act 78 was published on January 6, 2006, making January 7, 2006 the effective date of the Act.

3. Various provisions of the Act specified the effective date as the trigger to install the automatic fire sprinkler systems.

4. The department recognizes that promulgating this emergency rule will incorporate under the commercial building code, chapters, Comm 61 to 65, specific design and construction standards for new student housing facilities that are consistent with the intent of the Act.

5. The department recognizes that without promulgating this emergency rule, there could be confusion in design of any new student housing to be constructed in the very near future. The omission of the automatic fire sprinkler system during the initial design and construction would potentially place lives at greater risk.

6. In addition, the department recognizes that without promulgating this emergency rule, the confusion in omitting the automatic fire sprinkler system would result in additional costs to retrofit the installation of the system in order to fulfill the statutory obligation based upon the effective date of the Act.

Publication Date: March 4, 2006
Effective Date: March 4, 2006
Expiration Date: August 1, 2006
Hearing Date: May 15, 2006

Corrections

A rule was adopted creating **s. DOC 332.19**, relating to a sex offender registration fee.

Finding of Emergency

The department of corrections finds that an emergency exists and that rules are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is: Under 2005 WI Act 25, the legislature authorized the department to establish a sex offender registration fee. If the rule is not created promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of monitoring probationers, parolees, or persons on extended supervision, which could result in a lessening of supervision due to budget limitations.

The purpose of the emergency rule is to establish an annual sex offender registration fee to partially offset the costs of monitoring persons who are on probation, parole, or extended supervision. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of fees while permanent rules are being developed.

Publication Date: June 8, 2006
Effective Date: June 8, 2006
Expiration Date: November 5, 2006
Hearing Date: July 18, 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.

Emergency Management

Rule adopted creating **ch. WEM 7**, relating to disaster assistance for local governments.

Finding of Emergency

The Wisconsin Division of Emergency Management 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 an emergency is as follows:

1. The 2005 Wis. Act 269 created the major disaster assistance program under Wis. Stats. § 166.03 (2) (b) 9. An annual appropriation of \$3,000,000 SEG A for fiscal years 2005-06 and 2006-07 was established under Wis. Stats. § 20.465 (3) (b) (s) from the petroleum inspection fund. These funds were provided to make payments to local units of government for damages and costs incurred as a result of a major catastrophe. This Act was made retroactive to January 1, 2005.

2. The Act requires the Wisconsin Department of Military Affairs, through its Division of Emergency Management, to promulgate rules to implement and establish the application process and the criteria to determine eligibility under the major disaster assistance program. The Division will immediately begin the permanent rule-making process for establishing administrative rules for these payments, but cannot complete the required hearings and review of these rules prior to the lapse of funds retained in the major disaster assistance appropriation for fiscal year 2005-06.

3. To ensure that appropriated funds for fiscal year 2005-06 are timely paid to local governmental units for damages and eligible costs incurred as a direct result of major catastrophes, emergency administrative rules must be established immediately.

Publication Date: June 8, 2006
Effective Date: June 8, 2006
Expiration Date: November 5, 2006

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

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

- 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
Extension Through: July 12, 2006

- 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.

- Rules were adopted revising **ch. NR 47**, relating to the forestry research and development grant program.

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 opportunity for Wisconsin interests to compete for federal grants that improve the public health, public good and the environment through the development of alternative renewable energy and biochemical sources from forestry biomass.

Publication Date: March 16, 2006
Effective Date: March 16, 2006
Expiration Date: August 13, 2006
Hearing Date: April 24 & 26, 2006

- Rules were adopted creating **s. NR 45.04 (1) (g)**, relating to regulation of firewood entering and exiting department lands and affecting small businesses.

Finding of Emergency

It is important to have restrictions on out-of-state firewood entering department lands in place this camping season due to recent developments in efforts to eradicate and quarantine emerald ash borer in the areas where it is currently established. In Michigan, Ohio, Indiana and Ontario, eradication programs are being dramatically scaled back or abandoned entirely for this summer. A recent audit of quarantine efforts in Michigan where emerald ash borer is most abundant and widespread is critical and faults their program for lax enforcement and poor education of the public to the dangers of moving firewood. Given this situation, a need for an external quarantine to protect Wisconsin forest resources, industry, and community trees becomes obvious. The Wisconsin Department of Agriculture, Trade and Consumer Protection has proposed an external quarantine on host material of emerald ash borer and three other invasive pests and diseases and our firewood regulation would help support this effort, provide an opportunity for education of the public and reduce one of the reasons people move firewood: for use while camping.

Publication Date: March 27, 2006
Effective Date: April 1, 2006
Expiration Date: August 29, 2006
Hearing Date: July 5, 2006

Natural Resources (2) **(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.

- Rules adopted creating ss. NR 328.31 to 328.36, relating to shore erosion control on rivers and streams.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin

Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2006 construction season, with specific standards for shore erosion control structures on rivers and streams.

Publication Date: May 5, 2006
Effective Date: May 8, 2006
Expiration Date: October 4, 2006
Hearing Date: June 13, 2006

Regulation and Licensing

Rules were adopted creating chs. RL 164 and 165, relating to a code of conduct and renewal requirements for substance abuse professionals.

Plain language analysis

The purpose of this emergency rule is to create a code of conduct to facilitate assumption of disciplinary proceedings as part of the transfer of the regulation of substance abuse professionals from the Department of Health and Family Services to the Department of Regulation and Licensing. The emergency rule also sets forth the requirements for renewal.

The Department of Regulation and Licensing must promulgate this emergency rule for the period before the effective date of the permanent rules as promulgated under Wis. Stats. s. 440.88 (3). Under the previous regulatory scheme, the Department of Health and Family Services and the Wisconsin Certification Board had established a code of conduct and restrictions on late renewals. This emergency rule continues the applicability of the rules until the department, with the advice of the Advisory Committee, can establish permanent rules.

Exemption from finding of emergency

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

Publication Date: April 15, 2006
Effective Date: April 15, 2006
Expiration Date: September 12, 2006
Hearing Date: June 27, 2006

Transportation

Rules adopted creating **ch. Trans 515**, relating to contractual service procurement.

Exemption from finding of emergency

The Legislature, by Section 8 of 2005 Wis. Act 89, provides an exemption from a finding of emergency for the adoption of the rule.

Analysis Prepared by the Department of Transportation

The proposed rule requires a cost benefit analysis before procuring engineering or other specialized services under s. 84.01 (13), Stats., in excess of \$25,000 when those services are normally performed by state employees. The required analysis includes a comparison between the costs of contracting out and performing the services with state employees. The analysis also considers other subjective factors such as timeliness, quality and technical expertise.

Publication Date: July 1, 2006
Effective Date: July 1, 2006
Expiration Date: November 28, 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.

Scope statements

Elections Board

Subject

Amend the rules of the Elections Board, to add a provision, s. EIBd 7.04, that will require the security, review and verification of software components used with each electronic voting system approved by the board for use in Wisconsin.

Policy Analysis

Objective of the rule. Per 2005 Wisconsin Act 92, the Elections Board must “promulgate rules to ensure the security, review and verification of software components used with each voting system approved by the board. The verification procedures shall include a determination that the software components correspond to the instructions actually used by the system to count votes.”

2005 Wisconsin Act 92 defines software components as including “vote-counting source code, table structures, modules, program narratives and other human-readable computer instructions used to count votes with an electronic voting system.”

Under s. 5.84, Stats., “Where any municipality employs an electronic voting system which utilizes automatic tabulating equipment, either at the polling place or at a central counting location, the municipal clerk shall, on any day not more than 10 days prior to the election day on which the equipment is to be utilized, have the equipment tested to ascertain that it will correctly count the votes cast for all offices and on all measures.” The testing process for electronic voting systems has been heightened by 2005 Wisconsin Act 92, under which the Elections Board is required to ensure the security and verification of the software components by a review process.

The verification procedures shall include a determination that the software components correspond to the instructions actually used by the system to count votes.

Statutory authority

s. 5.05 (1) (f) and s. 227.11 (2) (a), Stats.

Staff time required

At least 80 hours of state employees’ time.

Entities affected by the rule

Wisconsin municipalities that use an electronic voting system will be required to perform the security compliance procedures required by the rule. The State Elections Board will be required to perform the verification review required by the rule.

Comparison with federal regulations

No federal regulation addresses the activities to be regulated by the rule, but the U.S. Election Assistance Commission is developing guidelines regarding the verification and security of software components used with each electronic voting system. The guidelines are not mandatory, however.

Emergency Management

Subject

The Wisconsin Department of Military Affairs, through its Division of Emergency Management, proposes to create ch. WEM 7, relating to the application process and criteria for determining eligibility for payments to local units of government for damages and costs incurred for major catastrophes.

Policy Analysis

The objective of this rule is to reduce the financial burden on local units of government for damages suffered and eligible costs incurred as the direct result of a major natural disaster. The intent of the rule is to make payments to local units of government for specific costs related to emergency response and recovery efforts that cannot be insured or that are impossible to predict based on the unique nature of the disaster response. These costs include debris removal, emergency protective measures taken to eliminate or reduce immediate threats to life, public health or safety or damages to roads or bridges.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule, and an analysis of the policy alternatives

2005 Wisconsin Act 269 created section 166.03 (2) (b) 9., Stats. that gives the Department of Military Affairs, through its Division of Emergency Management, the authority to establish an application process and eligibility criteria for payments to local units of government for damages and costs incurred for major catastrophes.

The alternatives to the proposed rule would result in not establishing a mechanism or eligibility criteria for payment to local units of government as provided under recently passed legislation.

Comparison with federal regulations

The federal Public Assistance Program (44 CFR part 206, Subparts G and H), made available in a Presidential Disaster Declaration, and the major disaster assistance program as provided for in WEM 7 are similar. Both programs provide grants to local governments that have sustained damages or incurred costs as a result of a major disaster. Each also has a cost share provision; the federal public assistance program is 75% federal with the remaining 25% split between the state and local applicant while the state program cost share is 70/30, state/local. The eligibility criteria for the state program resemble those of the federal program, specifically as they pertain to debris clearance, emergency protective measures and damage to road systems. The administrative and management processes for the state program will be patterned after those of the federal public assistance program and will be documented in a State Administrative Plan. For both programs the actual amount paid to an applicant is determined by the applicant’s ability to submit appropriate documentation justifying the claimed costs.

Statutory authority

The Department's authority to promulgate rules is under sections 166.03 (2) (b) 9., and 227.11 (2) (a), Stats.

Staff time required

The Department anticipates spending approximately 180 hours in the rule-development process.

Entities affected by the rule

This rule will affect local units of government.

Emergency Management**Subject**

The Wisconsin Department of Military Affairs, through its Division of Emergency Management, proposes to create ch. WEM 8, relating to the establishment of standards for the adoption of the Mutual Aid Box Alarm System, also known as MABAS, that may be used for the systematic deployment of fire, rescue and emergency medical services personnel and equipment in a multi-jurisdictional or multi-agency emergency response.

Policy Analysis

The objective of this rule is to establish standards to adopt the MABAS deployment mechanism to efficiently coordinate the provision of fire, rescue and emergency medical services mutual aid during multi-jurisdictional or multi-agency emergency response to crises, natural disasters and manmade catastrophes. When an emergency response exhausts local resources, the utilization of the Mutual Aid Box Alarm System will efficiently provide additional emergency response personnel and equipment to assist stricken communities and regions. The coordination and effective deployment of emergency response personnel and specialized response equipment at multi-agency and multi-jurisdictional emergency responses will serve to better protect the citizens and environment of the State as well as enhance intergovernmental cooperation.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule, and an analysis of the policy alternatives

2005 Wisconsin Act 257 amended section 166.03 (2) (a) 3., Stats. to give the Department of Military Affairs, through its Division of Emergency Management, the authority to establish standards for the adoption of the Mutual Aid Box Alarm System for utilization by fire, rescue and emergency medical services responders. This legislation also mandates that these standards be promulgated as administrative rules.

The alternative to the proposed rule would result in not establishing standards for the adoption of a proven mechanism for the systematic deployment of emergency response personnel and equipment at a multi-agency or multi-jurisdictional emergency response as provided under recently passed legislation.

Comparison with federal regulations

The Department is unaware of any proposed or existing federal regulation that is covered by this proposed rule.

Statutory authority

The Department's authority to promulgate rules is under sections 166.03 (2) (a) 3., and 227.11 (2) (a), Stats.

Staff time required

The Department anticipates spending approximately 150 hours in the rule-development process.

Entities affected by the rule

This rule will affect local units of government.

Natural Resources**Subject**

Objective of the rule. Creation of appendix EEEEE in ch. NR 460 and subchapter III in ch. NR 463 to incorporate national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. Other chapters may be amended, if germane and appropriate, to accomplish the actions described above.

Policy Analysis

There are no policy issues to be resolved. The US Environmental Protection Agency promulgated the NESHAP for iron and steel foundries on April 22, 2004 (69 FR 21906) and amended this NESHAP on May 20, 2005 (70 FR 29400). The NESHAP establishes maximum achievable control technology (MACT) requirements for iron and steel foundries. This action incorporates the foundry NESHAP into the Wisconsin Administrative Code.

Section 285.27 (2), Stats., requires the Department to promulgate NESHAP by rule. In addition, since this NESHAP affects more than ten facilities in Wisconsin, promulgation into state rule is consistent with the MACT Streamlining Policy approved by the Natural Resources Board in 1996.

Statutory authority

Sections 285.11 (1), 285.27 (2), and 227.11 (2) (a), Stats.

Staff time required

About 375 hours of Department staff time will be needed to develop this rule.

Comparison with federal regulations

This action promulgates national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. The EPA has identified iron and steel foundries as a major source of hazardous air pollutant (HAP) emissions. These standards implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emissions standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by facilities in the iron and steel foundries source category include metal and organic compounds. For iron and steel foundries that produce low alloy metal castings, metal HAP emitted are primarily lead and manganese with smaller amounts of cadmium, chromium, and nickel. For iron and steel foundries that produce high alloy metal or stainless steel castings, metal HAP emissions of chromium and nickel can be significant.

Organic HAP emissions include acetophenone, benzene, cumene, dibenzofurans, dioxins, formaldehyde, methanol, naphthalene, phenol, pyrene, toluene, triethylamine, and xylene. Exposure to these substances has been demonstrated to cause adverse health effects, including cancer and chronic or acute disorders of the respiratory, reproductive, and central nervous systems. When fully implemented, the final federal rule will reduce HAP emissions from iron and steel foundries by over 820 tons per year (tpy) nationwide.

As noted above, the federal NESHAP for iron and steel foundries is an existing federal regulation. While some changes to the federal rule language and organization may be necessary to accommodate state administrative rule format, no substantial changes will be made, and the state rule will be essentially identical to the federal NESHAP.

Entities affected by the rule

The NESHAP for iron and steel foundries will affect about 26 facilities statewide. All known affected and potentially affected sources have been or will be notified and informed about the existing federal NESHAP regulation including applicable notification requirements and compliance deadlines.

Submittal of rules to legislative council clearinghouse

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

Commerce

On June 15, 2006, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects Chs. Comm 5, 20, 21, 22, and 27, relating to the installation of manufactured homes.

Agency Procedure for Promulgation

The Safety and Buildings Division is responsible for the rule promulgation. A public hearing will be held on July 17, 2006.

Contact Person

James Quast, Program Manager
(608) 266-9292
jim.quast@wisconsin.gov

Natural Resources

On May 31, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to regulation of firewood entering department lands and affecting small business.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 5, 2006.

Contact Person

Dr. Andrea Diss Torrance
Bureau of Forest Science
(608) 264-9247

Public Service Commission

On June 1, 2006, the Public Service Commission of Wisconsin submitted a proposed rule to the Joint Legislative Council Staff (Rules Clearinghouse) for review.

Analysis

The proposed rule, Commission docket 1-AC-198, relates to the provision of universal telecommunications service, administration of the universal service fund and related changes.

Agency Procedure for Promulgation

A public hearing will be held on July 14, 2006, at 9:30 a.m., at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin.

The Telecommunications Division of the Commission is the organizational unit responsible for the promulgation of the rule.

Contact Person

The contact person is Anita Sprenger, Universal Service Fund Manager, (608) 266-3843.

Regulation and Licensing

On June 12, 2006, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 227.11 (2), Stats., and ch. 460, Stats.

The proposed rule-making order relates to application requirements, definitions, certifications, reciprocity, waiver of education requirements and unprofessional conduct, governing the certification of massage therapists and bodyworkers.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 14, 2006 at 9:00 a.m. in Room 123 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

Transportation

On June 7, 2006, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 227.14 (4m), Stats.

The proposed rule-making order relates to allowing the operation of double bottoms and certain other vehicles on specified highways.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 12, 2006.

The organizational unit responsible for promulgation of the proposed rule: Division of Transportation System Development, Bureau of Highway Operations.

Contact Person

Julie A. Johnson, Paralegal
(608) 266-8810

Transportation

On June 1, 2006, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 227.14 (4m), Stats.

The proposed rule-making order relates to CDL exemptions.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 29, 2006.

The organizational unit responsible for promulgation of the proposed rule: Division of Motor Vehicles, Bureau of Field Services.

Contact Person

Julie A. Johnson, Paralegal
(608) 266-8810

Workforce Development

On June 15, 2006, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect Ch. DWD 127, relating to the unemployment insurance work search.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 25, 2006. The organizational unit responsible for the

promulgation of the proposed rules is the DWD Unemployment Insurance Division.

Contact Person

Elaine Pridgen
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Workforce Development

On June 15, 2006, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect Ch. DWD 129, relating to unemployment insurance benefit claiming procedures.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 25, 2006. The organizational unit responsible for the promulgation of the proposed rules is the DWD Unemployment Insurance Division.

Contact Person

Elaine Pridgen
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Rule-making notices

Notice of Hearing

Commerce

**(Licenses, Certification, Chs. Comm 5)
(Uniform Dwelling, Chs. Comm 20–25)
(Manufactured Homes, Ch. Comm 27)**

[CR 06–071]

NOTICE IS HEREBY GIVEN that pursuant to s. 101.96 Stats., as created by 2005 Wisconsin Act 45, the Department of Commerce will hold a public hearing on proposed rules under Chs. Comm 5, 20, 21 and 27 relating to installation of manufactured homes and affecting small business.

The public hearing will be held as follows:

Date and Time:	Location
Monday, July 17, 2006 at 1:00 p.m.	201 W. Washington Avenue Conference Room 3C Madison

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until July 28, 2006, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Jim Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at jim.quast@wisconsin.gov.

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

Analysis Prepared by the Department of Commerce

Statutes interpreted: Section 101.96, Stats., as created by 2005 Wisconsin Act 45

Statutory authority: Section 101.96, Stats., as created by 2005 Wisconsin Act 45

Related Statute or Rule: Section 101.63 (1), Stats.

Explanation of Agency Authority. Section 101.96 (1) (a), Stats., requires the Department of Commerce to establish installation standards for the safe installation of manufactured homes in this state. Section 101.96 (1) (b), Stats., requires the department to establish a method for ensuring compliance with the installation standards, and to establish criteria for the licensure of 3rd party inspectors. Section 101.96 (2), Stats., requires the department to establish a program for the licensure of manufactured home installers. The installer license program must include license eligibility, an examination, an examination waiver procedure, license term, and license fees.

Summary of Proposed Rules. The proposed rules consist of new requirements in chapters Comm 5 and 20 to address the licensure of manufactured home installers, and the installation and inspection of manufactured homes.

The proposed rules for the licensure of manufactured home installers consist of new requirements under section Comm 5.327 in chapter Comm 5. Those rules contain qualification requirements consistent with the provisions in 2005 Wisconsin Act 45. The proposed rules require persons installing manufactured homes to be licensed after January 1, 2007. Completion of educational coursework which includes an exam is required to obtain the license unless the person provides evidence of having actively participated in the installation of at least 10 manufactured homes. The term of the license is 4 years, and a specified number of hours of continuing education are required for renewal of the license.

The proposed rules establishing installation requirements for manufactured homes are incorporated into the current rules in chapter Comm 21 of the Uniform Dwelling Code. The installation of manufactured homes produced on or after the effective date of the rules must utilize acceptable practices that address soil mechanics, site preparation, structural support, anchorage, and connections. The Department anticipates that installation practices being proposed by the federal Department of Housing and Urban Development currently under Title 24 CFR Part 3285 – Model Manufactured Home Installation Standards once finalized will be recognized by the Department of Commerce as an acceptable installation practice. The requirements in chapter Comm 27 are moved to chapters Comm 20 and 21, and chapter Comm 27 is repealed. As part of the Uniform Dwelling Code, the installation of a manufactured home will be administered and enforced by various certified UDC inspectors.

The proposed rules clarify administrative procedures regarding record keeping of permit applications, plan approvals, inspections and enforcement actions. A proposed rule revision also clarifies the application of thermal envelop requirements with respect to ground source heat pumps. Proposed rules also update various national standards to the latest editions that are currently referenced in the Uniform Dwelling Code.

Comparison with Federal Regulations. An Internet-based search of the *Code of Federal Regulations* (CFR) found the following existing federal regulations relating to the installation and inspection of manufactured homes.

- Title 24 CFR Part 3282 – Manufactured Home Procedural and Enforcement Regulations. This regulation in the federal Department of Housing and Urban Development contains the procedures for conducting inspections and investigations necessary to enforce the federal manufactured home construction and safety standards under Title 24 CFR Part 3280.

- Title 24 CFR Part 3280 – Manufactured Home Construction and Safety Standards. This regulation in the federal Department of Housing and Urban Development contains the standards for the design, construction, transportation, fire safety, plumbing, heat-producing and electrical systems of manufactured homes which are designed to be used as dwelling units.

These federal regulations apply to different subjects and do not address the same activities as compared to the proposed rules.

An Internet-based search of the 2004 and 2005 issues of the *Federal Register* found the following proposed regulations relating to the installation and inspection of manufactured homes.

- Federal Register, Vol. 70, No. 79, Tuesday, April 26, 2005, 24 CFR Parts 3280 and 3285, Model Manufactured Home Installation Standards, proposed rule. The proposed regulations under Part 3285 contain standards for the installation of new manufactured homes, including standards for the completion of certain aspects necessary to join all sections of multi-section homes.

Comparison with Rules in Adjacent States. An Internet-based search of adjacent states' rules found the following regulations that include requirements relating to the installation and inspection of manufactured homes.

- Illinois has state regulations requiring manufactured homes to be tied down in accordance with the state tie down installation requirements, the home manufacturer's instructions and the tie down manufacturer's instructions. Illinois also requires manufactured homes to be installed by a licensed installer. Licensed installers must complete a 10-hour installation course approved by the Department of Public Health. Inspections of new community sites are required before placement of homes.

- Iowa has state regulations applying to the installation of manufactured homes and the licensure of home installers, administered by the Department of Public Safety. The state installation regulations consist of standards for piers and tie downs, and require installations to be performed by a certified manufactured home installer. Installer certification consists of submitting an application describing the applicant's training and experience related to manufactured home installation. Inspections of home installations are made upon request of the home owner.

- Michigan has state regulations applying to the installation of manufactured homes and the licensing of home installers, administered by the Department of Consumer and Industry Services. The regulations require installation in accordance with the manufacturer's installation instructions. Applicants for the installer license must complete a department-approved installation instruction program. Field inspections of manufactured home communities are performed by the department.

- Minnesota has state regulations applying to the installation of manufactured homes and the licensure of manufactured home installers, administered by the Department of Administration. The regulations require installation in accordance with the manufacturer's installation instructions and specified support and stabilizing requirements. Passage of an examination is required for the installer license. Inspections of home installations are made upon request of the home owner.

Summary of Factual Data and Analytical Methodologies.

In developing the proposed rules the Department reviewed the federal regulations under the Manufactured Housing Improvement Act of 2000 relating to Model Manufactured Home Installation Standards.

The Department also utilizes advisory councils in analyzing and developing proposed revisions for manufactured homes. The councils involved in the review of the proposed rules were the Manufactured Homes, and Home Parks Advisory Council, the Manufactured Housing Council, and the Uniform Dwelling Code Council. These councils involve a variety of organizations whose memberships

include many types of small businesses. The Department utilizes these councils to gather information on potential impacts in complying with the both the technical and administrative requirements of the codes. A responsibility of council members is to bring forth concerns their respective organizations may have with the requirements, including concerns regarding economic impacts. (Copies of the council meetings summaries are on file in the Safety and Building Division.)

An economic impact report has not been required pursuant to s. 227.137, Stats.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report. The proposed rules reflect the mandates of 2005 Wisconsin Act 45 which was proposed and supported by the Wisconsin Housing Alliance. Members of this group include manufactured home installers, dealers, manufacturers and manufactured home community owners. Act 45 was the result of a federal HUD initiative under 24 CFR Part 3285.

The requirements relating to the installation of manufactured homes impact businesses of all sizes. The rules impact a variety of businesses, including small businesses, particularly those businesses that produce, sell, install or inspect manufactured homes.

The potential compliance effects of the rules occur on two basic levels, administrative and technical. Pursuant to federal law and 2005 Wisconsin Act 45, beginning on January 1, 2007 the installation of manufactured homes must occur under the supervision of licensed installers. The Department believes that the number of manufactured home installer businesses to be less than 50 based upon an estimate from the Wisconsin Housing Alliance. The renewal of an installer's license will be contingent upon fulfilling continuing education obligations.

The installation of a manufactured home under the UDC program will necessitate acquiring a permit and inspections. In those portions of the state where administration and enforcement of the program is by the Department through contracts with independent inspection agencies, the Department anticipates the permit and inspection fees to be approximately \$350 per installation. The application for the permit may be made by the home owner or their designated agent which could be the installer, manufacturer, the dealer or some one else.

The code establishes technical standards that are to be adhered to when installing manufactured homes.

The Department believes that the proposed rules would have a minimal additional impact on small business based upon a determination from HUD which indicated that the costs and cost impacts do not represent a significant economic effect on either an industry wide or per-home basis. (Federal Register/Vol. 70, No. 79/ Tuesday, April 26, 2005 p. 21516)

Advisory Council

The proposed rules have been developed with the assistance of the following Advisory Councils:

Manufactured Homes and Home Parks Advisory Council

<u>Name</u>	<u>Representing</u>
Phil Blazkowski	Inspector
Brian Brown	Sewer/Water Service Provider
Gregg Cleveland	Fire Chief
Joseph Dentice, Jr.	Community Operator
Mark Flood	Community Owner
John Geise	Manufacturer

- Pete Halverson Manufactured Home Dealer/
Salesperson
- Ron Middleton Community Owner
- Al Rhinerson Installer
- Tom Schrader Public
- Kristen Zehner Manufactured Home Owner

Manufactured Housing Code Council

- | <u>Name</u> | <u>Representing</u> |
|---------------------------|--|
| Steve Andreske | Manufacturer |
| Dan Curran | Inspector |
| John Geise | Manufacturer |
| Bart Huntington | Manufactured Home Dealer |
| Ross Kinzler | Manufactured Housing Industry
Association |
| Bob Kluwin | Manufactured Housing Industry
Supplier |
| Harry Kreuser | Labor |
| Ron Middleton | Manufactured Home Community
Owners |
| Jim Reitzner | Manufactured Home Community
Owners |
| Al Rhinerson | Manufactured Home Installers |
| Al Schwoerer | Manufactured Home Installers |
| Mark Theide | Manufactured Home Dealers |
| Kristen Zehner | Public |

Uniform Dwelling Code Council

- | <u>Name</u> | <u>Representing</u> |
|------------------------------|-----------------------|
| Allan Bachmann | Remodeling Contractor |
| Jeffrey Bechard | Labor |
| Ken Dentice | Building Inspector |
| David Dolan-Wallace | Architect |
| Dan Gorski | Contractor |
| Robert Jakel | Public |
| Steve Levine | Public |
| Daniel Nowak | Building Inspector |
| Frank Opatik | Housing Manufacturer |
| Tom Palecek | Housing Manufacturer |
| William Roehr | Labor |
| Gary Ruhl | Labor |
| Mary Schroeder | Contractor |
| Kathleen Stadtherr | Building Inspector |
| William Turner | Supplier |
| John Vande Castle | Supplier |
| Mike Wallace | Building Inspector |
| Paul Welnak | Labor |

Copies of Rule

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email

at roberta.ward@wisconsin.gov, or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Environmental Assessment

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

Initial Regulatory Flexibility Analysis

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

The requirements relating to the installation of manufactured homes impact businesses of all sizes. The rules impact a variety of businesses, including small businesses, particularly those businesses that produce, sell, install or inspect manufactured homes.

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

The installation of a manufactured home under the UDC program will necessitate acquiring a permit and inspections. In those portions of the state where administration and enforcement of the program is by the Department through contracts with independent inspection agencies, the Department anticipates the permit and inspection fees to be approximately \$350 per installation. The application for the permit may be made by the home owner or their designated agent which could be the installer, manufacturer, the dealer or some one else.

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

Pursuant to federal law and 2005 Wisconsin Act 45, beginning on January 1, 2007 the installation of manufactured homes must occur under the supervision of licensed installers. The renewal of an installer’s license will be contingent upon fulfilling continuing education obligations. The code establishes technical standards that are to be adhered to when installing manufactured homes.

4. Rules have a significant economic impact on small businesses.

Rules were not submitted to Small Business Regulatory Review Board.

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

Fiscal Estimate

The proposed rules establish licensure for installers of manufactured homes and standards for the installation and the installation inspection of manufactured homes. The Department estimates that the number of manufactured home installers to be less than 50. The Department proposes a license fee of \$100 with the term of the license lasting 4 years. This would generate an increase of \$5,000 in revenues over a 4-year period. The Department would be absorbed within current resources.

The installation and the inspection of the installation of manufactured homes is to be placed under the administration and enforcement of the Uniform Dwelling Code, UDC, chapters Comm 20-25. The Department estimates that there will 3,000 installations annually. The Department would

collect an estimated \$75,000 annually in seal fee revenue under the UDC program. The consultant and processing workload associated with the manufactured home installation facet of the program would be absorbed by current staff.

Administration and enforcement of the UDC Code typically is handled at the local municipal level with municipal costs offset by permit and/or inspection fees established by each municipality.

The installation of a manufactured home under the UDC program will necessitate acquiring a permit and inspections. In those portions of the state where administration and enforcement of the program is by the Department through contracts with independent inspection agencies, the Department anticipates the permit and inspection fees to be approximately \$350 per installation.

The proposed rules and the enabling legislation, 2005 Wisconsin Act 45, are the result of a federal HUD initiative under 24 CFR Part 3285. HUD has indicated that the "costs and cost impacts do not represent a significant economic effect on either an industry wide or per-home basis." (Federal Register/Vol. 70, No. 79/ Tuesday, April 26, 2005 p. 21516)

No long-range fiscal implications are anticipated.

Notice of Hearings Corrections [CR 06-066]

NOTICE IS HEREBY GIVEN that pursuant to sections 227.11 (2) and 301.45 (10), Stats., and interpreting ss. 301.45 (10), Stats., the department of corrections will hold public hearings to consider:

Emergency rule DOC 332.19, relating to the establishment of a sex offender registration fee to partially offset the costs of monitoring persons on probation, parole, or extended supervision; and

Proposed permanent rule DOC 332.19, relating to the establishment of a sex offender registration fee to partially offset the costs of monitoring persons on probation, parole, or extended supervision.

Hearing information:

Date & Time Location

July 18, 2006 Conference Room 116

10:00 a.m. State Office Building

819 North 6th Street

Milwaukee, Wisconsin

July 18, 2006 St. Croix Conference Room—First Floor

2:30 p.m. Department of Administration

101 East Wilson Street

Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by July 21, 2006. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email kathryn.anderson@doc.state.wi.us.

The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the

hearing, please contact Kathryn Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, email kathryn.anderson@doc.state.wi.us, telephone (608) 240-5049 by July 7, 2004.

The purpose of the emergency rule is to establish an annual sex offender registration fee to partially offset the costs of monitoring persons who are on probation, parole, or extended supervision. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of fees while permanent rules are being developed.

Under the authority vested in the Department of Corrections by ss. 227.11 (2) and 301.45 (10), Stats., the Department of Corrections hereby creates rules relating to the establishment of a sex offender registration fee to partially offset the costs of monitoring persons on probation, parole, or extended supervision, as follows:

PLAIN LANGUAGE ANALYSIS:

Statutory authority: s. 227.11 (2) and 301.45 (10), Stats.

Statutes interpreted: s. 301.45(10), Stats.

The rule establishes an annual fee to partially offset the costs of monitoring persons who are on probation, parole, or extended supervision. Generally, the department has interpreted that all individuals who are subject to it supervision whether incarcerated or on probation, parole, or extended supervision, are under its custody. Because of the statutory language which seems to distinguish between those "in custody" and those on probation, parole, or extended supervision, the department has defined the term "custody" and used the terms "offender" and "inmate" to describe the individuals who are subject to this fee. The department has set the annual fee at \$50.00. The department also has established procedures for the collection and recording of the registration fee, as well as procedures for the failure of payment by an inmate or offender.

SECTION 1. Section DOC 332.19 is created to read:

DOC 332.19 Sex offender registration fee.

(1) **APPLICABILITY.** A person who is required to register as a sex offender under s. 301.45, Stats., and who is in the department's custody or who is on probation, parole, or extended supervision shall be charged a registration fee to partially offset the costs of monitoring offenders.

(2) **DEFINITIONS.**

(a) "Custody" means being under the authority of the department as an inmate, a probationer, parolee, or person subject to extended supervision under s. 302.113, Stats.

(b) "Offender" means a person on probation, parole, or extended supervision under s. 302.113, Stats.

(3) **FEE.** The sex offender registration fee shall be \$50.00 on an annual basis.

(4) **RECORDING OF REGISTRATION FEE.** With reference to the sex offender registration fee under sub. (3), the department shall do the following:

(a) Record all registration fees paid by an inmate or offender.

(b) Provide the inmate or offender access to a copy of the record of payments to verify receipt of payments.

(c) Advise the inmate or offender of nonpayment of registration fees.

(d) Audit the record of payment of registration fees.

(5) **COLLECTION OF REGISTRATION FEE.** In collecting the sex offender registration fee, all of the following shall occur:

(a) The department shall do the following:

1. Establish a registration fee payment schedule including all of the following:

- a. A grace period for the initial registration fee payment.
- b. A deadline for payment for each subsequent year of registration.

2. Approve procedures for the collection of registration fees.

3. Provide the inmate or offender with a copy of the sex offender registration fee payment procedures.

4. Credit those moneys collected to the appropriation account under s. 20.410 (1) (gd), Stats.

(b) The inmate or offender shall pay the sex offender registration fee to the department according to the procedures established by the department.

(6) DEPARTMENT ACTION WHEN AN INMATE OR OFFENDER FAILS TO PAY REGISTRATION FEE. The department may use any of the following actions in any order when an inmate or offender fails to pay the sex offender registration fee:

(a) Counseling.

(b) Wage assignment.

(c) Review of supervision or custody level to determine if more restrictive sanctions are needed, including an increase in the level of supervision, increase in the security level of custody, or electronic monitoring or detention in a jail, correctional facility or house of corrections for those on probation, parole or extended supervision.

(d) Issue a recommendation for revocation of parole, probation or extended supervision for an offender's willful failure to pay the sex offender registration fee.

(e) Any other appropriate means of obtaining the sex offender registration fee.

Initial Regulatory Flexibility Analysis

The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.

Contact Person

Paper copies of the rule and the fiscal estimate may be obtained without cost from Kathryn Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, telephone (608) 240-5049, email kathryn.anderson@doc.state.wi.us or by direct link:

http://www.wi-doc.com/Emer_RuleDOC332_19.htm.

Copies will also be available at the public hearings.

Notice of Hearing

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

[CR 06-054]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 457.12 (4), Stats., the Professional Counselor Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. MPSW

11.02, relating to required examinations for licensure as a professional counselor.

Hearing Date, Time and Location

Date: **August 1, 2006**

Time: 1:15 p.m.

Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
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 the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by August 1, 2006, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes interpreted: Section 457.12 (4), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) and 457.03 (3), Stats.

Explanation of agency authority: Under s. 457.03, Stats., the Professional Counselor Section is charged with establishing examination requirements for becoming a licensed professional counselor. The section has determined that the National Counselor Mental Health Certification Examination is an additional examination that adequately measures competency and is therefore seeking to amend its rule to include it. Furthermore, the section is seeking the authority to review other examinations that applicants may have taken in order to determine whether those too adequately measure competency.

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

Plain language analysis: This proposed rule-making order will permit applicants for licensure as professional counselors to take and pass examinations that would demonstrate their professional competency. Currently, either the National Counselor Examination or the Certified Rehabilitation Counselor Examination is required for licensure. This proposal would give applicants an additional option of being able to take the National Counselor Mental Health Certification Examination. It would also permit the section to approve another examination that it deems to be equivalent to the other three. As a result, the proposed change would permit applicants who take and successfully pass one of three examinations or an equivalent one approved by the section to become eligible for licensure as a professional counselor.

This amendment will provide greater flexibility to applicants while maintaining protection of the public. Presently, those individuals who take and pass the National Counselor Mental Health Certification Examination must also take and pass the National Counselor Examination in order to be eligible for licensure as a Wisconsin professional counselor, thereby resulting in an unnecessary barrier to licensure.

SECTION 1 amends the existing rule to include the National Counselor Mental Health Certification Examination and also permits the section to accept additional examinations that it deems to be equivalent to the other ones.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation.

Summary of factual data and analytical methodologies:

The Professional Counselor Section is amending its rules based on the section's professional experience for requirements for licensure. A review of surrounding state licensure supports the section's proposal. Iowa allows passage of the NCMHCE and Minnesota allows for passage of examinations determined equivalent by their board.

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

There are no supporting documents determining effect on small business. The rules change does not affect small business as it does not place any additional regulatory requirements for attaining professional counseling licensure.

Section 227.137, Stats., requires as "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 Department of Regulation and Licensing estimates that this rule will require time in the Division of Professional Credentialing. The total staff salary and fringe is estimated at \$57.

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 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 August 1, 2006, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. MPSW 11.02 is amended to read:

MPSW 11.02 Examination required. An applicant for licensure as a professional counselor shall ~~pass both parts of the examination required under s. 457.12 (4), Stats., consisting of take and~~ pass the Wisconsin statutes and rules examination, and either one of the national counselor examination or the certified rehabilitation counselor examination following: the National Counselor Examination, the National Counselor Mental Health Certification Examination, the Certified Rehabilitation Counselor examination, or another examination approved by the section. Both parts of the examination may be taken prior

to the completion of the required period of supervised practice.

Notice of Hearing Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

[CR 06-055]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats., and interpreting s. 457.035, Stats., the Professional Counselor Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal s. MPSW 13.01, relating to psychotherapeutic counseling by professional counselors.

Hearing Date, Time and Location

Date: **August 1, 2006**
Time: 1:15 p.m.
Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
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 the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by August 1, 2006, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes interpreted: Section 457.035, Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats.

Explanation of agency authority:

Under s. 457.035, Wis. Stats., the Professional Counselor Section may promulgate rules regarding psychotherapy. The section did so and is now seeking to repeal its previously promulgated rule because it has determined that it is unnecessary. Currently, licensed professional counselors are able to practice independently, without supervision. If the existing provision is implemented, it will require certain practitioners to obtain supervision or will require them to meet additional requirements.

Related statute or rule:

There are no related statutes or rules other than those listed above.

Plain language analysis:

Currently, the independent practice of psychotherapy is within the scope of practice for licensed professional counselors. Repeal of the rule would preserve existing policy. Unless repealed, s. MPSW 13.01 will become effective and require professional counselors to work under supervision if they are providing psychotherapy but have not completed the requirements for independent practice.

Because there have not been complaints under the status quo, the Professional Counselor Section believes that the implementation of this provision is unnecessary and will in no way harm the public. Additionally, if implemented, an undue burden will be placed on licensees as they would be required to take an additional examination, and provide evidence of their clinical practice and academic coursework.

SECTION 1 repeals s. MPSW 13.01 thereby eliminating the requirements for professional counselors who provide psychotherapy.

Summary of, and comparison with, existing or proposed federal regulation:

There is no applicable existing federal regulation.

Comparison with rules in adjacent states:

Illinois:

Illinois has two statutory levels of licensure for professional counselors, including both licensed professional counselors and clinical professional counselors.

Iowa:

Iowa does not license professional counselors as a profession, but instead issues licenses to Mental Health Counselors and Marriage and Family Therapists. In Iowa, there is only one level of licensure and no separate clinical level.

Michigan:

Michigan appears to have two levels of licensure, including a limited professional counselor license available to individuals with a bachelor's degree and 5 years experience and a professional counselor license. However, the professional counselor license does not have a clinical component or level.

Minnesota:

Minnesota issues licenses to professional counselors, but does not have a clinical level credential.

Summary of factual data and analytical methodologies:

The section is proposing to amend its rules based on the professional experience of its members. There is no factual analysis available to support or oppose this proposal.

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

The proposed rule change, if enacted on or before January 1, 2007, will have no effect on existing small business. The rule change repeals an administrative rule with an initial effective date of January 1, 2007, thereby preserving the status quo.

After January 1, 2007, s. MPSW 13.01 (the existing rule) will become effective, limiting the scope of practice of existing licensees unless they apply for a certification through the Department of Regulation and Licensing. This proposed rule change, if enacted after January, 2007, will eliminate the need for an additional certification, and in the section's opinion, relieve an undue burden on professional counselors who may wish to practice independently.

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 department finds that the proposed rule will have no significant fiscal impact.

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 person

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

Written comments

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 August 1, 2006, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. MPSW 13.01 is repealed.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 and 227.11 (2) (a), Stats., interpreting ss. 29.014 and 29.041, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to the 2006 migratory game bird seasons and waterfowl hunting zones. The proposed rule establishes the season length and bag limits for the 2006 Wisconsin migratory game bird seasons. For ducks, the state is divided into two zones each with 60-day seasons. The season is proposed to begin at 9:00 a.m. on September 23 and continue for 60 consecutive days in the north, closing on November 21. In the south, the season would begin at 9:00 a.m. on September 30 and continue through October 8, followed by a 5-day split, and then reopening on October 14 and continuing through December 3. The daily bag limit is 6 ducks including no more than 4 mallards, of which only one may be a hen, one black duck, one pintail, one canvasback (from October 14 to November 12 statewide), 2 wood ducks, 2 redheads and 2 scaup.

For Canada geese, the state is apportioned in 3 goose hunting zones with other special goose management subzones within the Exterior Zone. Season lengths are: Collins Zone - 64 days; Horicon Zone - 92 days; Exterior Zone - 92 days; and the Mississippi River subzone - 70 days. The Burnett County subzone is closed to Canada goose hunting. The statewide daily bag limit for Canada geese is the Horicon and Collins Zones is 2 birds per day during the open seasons within each zone. In the Exterior Zone and its subzones, the daily bag limit will be one bird per day from September 16 to October 1 and 2 birds per day for the remainder of the season.

NOTICE IS HEREBY FURTHER GIVEN that in addition to comments on the proposed season lengths and bag limits, the Department is seeking public input regarding proposals (1) for the opening time for the first day of the 2006 duck seasons; (2) to eliminate the Canada goose Horicon Intensive Management subzone adjacent to the Horicon National

Wildlife Refuge; and (3) establishing a new North/South zone boundary for Wisconsin's duck zones for the 2006–2010 period.

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

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

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

August 7, 2006 (Monday)	Basement conference room County Administration Building 400 4 th Street North La Crosse at 7:00 p.m.
August 8, 2006 (Tuesday)	Room A, DNR Service Center 107 Sutliff Avenue Rhineland at 7:00 p.m.
August 9, 2006 (Wednesday)	Room 310, Green Bay City Hall 100 N. Jefferson Street Green Bay at 7:00 p.m.
August 10, 2006 (Thursday)	Main conference room State Office Building 141 NW Barstow Street Waukesha at 7:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ms. Kim Benton at (608) 261–6458 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Copy of Rule

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this website using the Natural Resources Board Order No. WM–26–06.) Written comments on the proposed rule may be submitted via U.S. mail to Ms. Kim Benton, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 10, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Benton.

Notice of Hearing Public Service Commission [CR 06–067]

The Public Service Commission of Wisconsin proposes an order to revise ch. PSC 160, relating to the provision of universal telecommunications service, administration of the universal service fund and related changes.

The Commission invites testimony and written comments about all of the proposed rule changes, and also about:

- Whether changes concerning Eligible Telecommunications Carrier (ETC) status are necessary or desirable pursuant to changes made to the federal ETC requirements by the Federal Communications Commission (FCC).¹

¹*See, In Re: Federal–State Joint Board on Universal Service*, “Report and Order,” CC Docket No. 96–45; FCC 05–46, issued March 17, 2005. The Report and Order adopted certain recommendations made by the Federal–State Joint Board on Universal Service regarding minimum eligibility, certification, and reporting requirements for carriers wanting to be designated as an ETC by the FCC. The Report and Order encouraged states exercising jurisdiction over ETC designations pursuant to 47 U.S.C. § 214 (e) (2), to adopt the same requirements. In addition, the Report and Order permits states to extend generally applicable consumer protection requirements to all ETCs, including wireless carriers.

- Whether assessment of wireless providers should be resumed.

- Whether changes should be made to Wis. Admin. Code ss. PSC 160.031 and 160.035 to update the data transmission capability requirement. Possible approaches could be:

- Making no changes to the section.
- Raising the speed requirement for all voice grade lines to some other number, such as 28 kbs, or 56 kbps.

- Other options, such as allowing for the use of other, non–voice grade services to meet the requirement, allowing partnering with other providers, allowing phase–in periods or applying the requirement to a certain percentage of customers, allowing waivers if the company can demonstrate that meeting the requirement will not be profitable, or using Universal Service Fund (USF) money to allow companies to meet the requirement. These options are further described in the Commission Information Memo on Data Transmission.²

² The Commission Information Memo is dated November 2, 2005, and is available on the Commission website, psc.wi.gov, under Telecommunications Major Cases.

Analysis Prepared by the Public Service Commission of Wisconsin

The analysis is set forth as Attachment A.

Initial Regulatory Flexibility Analysis

Existing USF rules may have an effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats. These small telecommunications utilities, like other telecommunications providers (both large and small), have obligations under the USF, including an obligation for payments to the USF. Additionally, this rule continues to allow the USF assessment of commercial mobile radio service (CMRS) providers, although the assessment has been suspended by the Commission pending the promulgation of this rule. The Commission may or may not end the

suspension. Other requirements in the rule only apply to CMRS providers who voluntarily choose to become designated as eligible telecommunications carriers. Since the Commission does not regulate CMRS providers, it does not have records indicating how many of them are small businesses.

These proposed rules should have no particular impact on small businesses. The Commission already has established, in s. PSC 160.18 (1), an exemption from fund assessments to protect entry by and continued operation of small telecommunications providers as directed by statutory objectives. In s. PSC 160.01 (2) (b), the existing rules allow the Commission to give individual consideration to unusual situations and to adopt different requirements for particular telecommunications providers. Small businesses can request that the Commission provide an exception to a rule requirement. There are no new reporting or bookkeeping requirements created under these proposed rules.

The agency has considered the methods in s. 227.114 (2), Stats., for reducing the impact of the rules on small businesses. Accordingly, the agency has included provisions for exemption from assessments for small providers, and allowing requests for consideration of unusual circumstances, as noted above. Further application of these methods is not consistent with statutory objectives.

Fiscal Estimate

These rule changes have no fiscal impact. There is also no financial impact on the private sector.

Notice of Hearing

NOTICE IS GIVEN that pursuant to s. 227.16 (2) (b), Stats., the Commission will hold a public hearing on these proposed rule changes in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on Friday, **July 14, 2006**, at 9:30 a.m. This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

Written Comments

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until Friday, July 28, 2006, at noon (Thursday, July 27, 2006, at noon, if filed by fax). All written comments must include a reference on the filing to docket 1-AC-198. File by one mode only.

Industry: File comments using the Electronic Regulatory Filing system. This may be accessed from the Commission's website psc.wi.gov.

Members of the Public:

If filing electronically: Use the Public Comments system or the Electronic Regulatory Filing system. Both of these may be accessed from the Commission's website psc.wi.gov.

If filing by mail, courier, or hand delivery: Address as shown in the box on page 1.

If filing by fax: Send fax comments to (608) 266-3957. Fax filing cover sheet MUST state "Official Filing," the docket number 1-AC-198, and the number of pages (limited to 25 pages for fax comments).

Contact Person

Questions regarding this matter should be directed to Anita Sprenger, Universal Service Fund Manager at (608) 266-3843. Small business questions may be directed to Gary Evenson at (608) 266-6744 or Gary.Evenson@psc.state.wi.us. Media questions should be directed to Linda

Barth, Director of Governmental and Public Affairs at (608) 266-9600. Hearing or speech-impaired individuals may also use the Commission's TTY number, if calling from Wisconsin (800) 251-8345, if calling from outside Wisconsin (608) 267-1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact Anita Sprenger, as indicated in the previous paragraph, as soon as possible.

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.02 (3), 196.218 (5m), and 227.11 (2), Stats.

Statute interpreted: 196.218, Stats.

Objective of the Rule

The objective of this rulemaking is to revise the existing ch. PSC 160, Universal Service Support Funding and Programs. These rules were originally created in 1996, then revised in 2000. Minor changes are also made to Wis. Admin. Code chs. 161, 165, and 171. In the proposed rule, the Commission revises existing Universal Service programs that provide access to telecommunications service to all Wisconsin customers regardless of geographic location, income or disability, and to assist in the deployment of advanced services in all areas of the state. In this same chapter, are revisions to the mechanism for funding those programs and for administering the Universal Service Fund (USF).

The Commission is proposing the following revisions to its universal service rules to reflect its experience with administering and operating the programs included in this proposed rule. The revisions also reflect the evolution of the telecommunications market and telecommunications technology in Wisconsin, and also ensure that state universal service programs do not conflict with new federal programs and rules.

In preparation of these proposed rules, Commission staff worked closely with the Universal Service Fund Council (USFC). The USFC submitted its recommendations on rule changes to the Commission in January 2002. Since then, staff continued revising various sections of the rule. Many of the changes were minor and editorial, but some were substantive. On August 30, 2004, the USFC approved a revised draft of the rules that incorporated all of the changes staff had proposed to that point. Only a few changes to the proposed rule have been made since the USFC approved the draft in August 2004. Those sections are noted in the analysis below.

Statutory Authority to Promulgate the Proposed Rule

Section 196.218, Stats., defines and authorizes the USF. Specifically, s. 196.218 (5m), Stats., requires the Commission to periodically review and revise, as appropriate, the universal service rules.

Section-by-Section Analysis of the Proposed Revisions

A number of non-substantive changes have been made to update language to current drafting style. For example, uses of "shall not" have been changed to "may not."

PSC 160.01 Scope and Purpose

The only change is to the reference regarding services to programs since this chapter focuses on universal service programs.

PSC 160.02 Definitions

The modifications reflect updates in statutes and rules. The definition of "institutions" is removed since the institutions

program no longer exists. A definition for “pay-per-call service” has been added as defined in statute. Cognitive impairment has been added to the definition of disability to address the needs of those individuals with cognitive impairments that need specialized telecommunications equipment to have access to essential telecommunications services. SeniorCare under s. 49.688, Stats., has been added as a program that enables a household to be defined as low-income. This will enable many of the senior citizens that currently qualify under the Wisconsin Homestead Tax Credit eligibility criteria to now qualify under SeniorCare. The verification process for SeniorCare is simpler and more efficient than the verification process for Homestead Tax Credit. The definition of “two-line hearing carryover” has been added.

PSC 160.03 Essential Telecommunications Services

Single party revertive calling is deleted from the list of essential telecommunication services with regard to the USF because it is already included as a basic utility obligation under Wis. Admin. Code s. PSC 165.081 (6). The description of toll blocking is changed so that rather than repeating the requirement here, it refers to the section of the rule relating to toll blocking.

The USFC recommended deleting the directory listing and annual directory distribution requirements from the list of essential services because at the time this was decided, another rulemaking would have made these sections redundant. That rule is not through the promulgation process, so the recommended changes to this rule have not been included in this rulemaking. They can be included in the next review of these rules.

PSC 160.035 Advanced Service Capabilities

This authorizes the Commission to use universal service support to enable a provider to use other sources, such as small diameter satellite dish system companies, to provide an equivalent to an advanced service when it is not reasonable to require a provider to offer a given advanced service capability.

PSC 160.04 Toll Blocking

The proposed revisions for this section include blocking of all pay-for-service calls, rather than specifying 900 and 976 calls as the current rule does. Clarification concerning the blocking of collect and certain other calls is added.

PSC 160.05 Universal Service Fund Programs

Reference to the “assistance to institutions” program is eliminated since this program no longer exists. Intralata toll provider of last resort is removed from the program list since the section it refers to is being deleted. Two-line voice carryover was expanded to also include two-line hearing carryover.

PSC 160.06 Eligibility for Low-Income Programs

This section is updated to expand eligibility to those who qualify for federal USF support as residents of tribal lands.

PSC 160.061 (1)

Changes to this section allow residences with more than one telephone line to qualify for LinkUp for one of the lines. (Currently residences with more than one line are not eligible for any LinkUp assistance.) This modification allows more flexibility for participants in the program, particularly in situations where a separate telephone line is needed by a low-income resident of a household where multiple families or unrelated roommates share an address. With this change, the rule would be consistent with the Federal Communications Commission (FCC) rule which now allows Lifeline to cover one line in residences with more than one line.

PSC 160.061 (5)

Language is added to clarify when a customer becomes eligible for LinkUp benefits, if eligibility cannot be verified at the time the service order is issued. Specifically, a provision is added relating to customers who are eligible for federal universal service fund support as residents of tribal lands.

PSC 160.061 (6)

This change corrects an anomaly that could result in certain eligible telecommunications carriers (ETCs) receiving less USF support for LinkUp than non-ETCs with the same charges. This is due to the interplay between state and federal USF support for ETCs. This rule revision ensures that ETCs and non-ETCs receive the same total amount of USF support for LinkUp.

PSC 160.061 (7)

This section is added so that local service providers file timely requests for reimbursements and so charges to the universal fund cannot be accumulated over several years.

PSC 160.062 (1), (2) and (3)

The first change in this section clarifies the intent to have providers offer a lifeline discount on any rate or package the customer chooses. This change would enable customers to select the local rate or service package that will best meet the needs of their household and have the lifeline discount package applied to that rate or package.

The second change in this section enables residences with more than one line to potentially qualify for Lifeline for one of the lines. This allows more flexibility for the program particularly in situations where a separate telephone line is needed by a low-income resident of a household where multiple families or unrelated roommates share an address. This is consistent with the FCC rule, which now allows Lifeline to cover one line in residences with more than one line.

PSC 160.062 (4) (Changes in this section were made after the Council approved the draft rules)

The changes to this section clarify how to determine what the lifeline discount will be under several scenarios. This section is added because of the changing telecommunications market where many customers purchase local service as part of a larger telecommunications service package and it can be unclear as to how to determine what level lifeline discount to apply.

This section also addresses when and how a commercial mobile radio (wireless) service provider establishes its lifeline base rate, from which the monthly lifeline rate adjustment is calculated.

PSC 160.062 (5) (Changes in this section were made after the Council approved the draft rules)

This section includes changes in how the reimbursement level for providers is determined in certain situations, so that changes at the federal level can be accommodated without Commission action. Generally, state USF dollars are not affected, and this change will allow the federal contribution to the lifeline adjustment to be provided to customers automatically. The current rules require an exception from the Commission before providers can increase Lifeline credits in order to match FCC ordered increases in the federal Subscriber Line Charge – even when the FCC increases its reimbursements to cover those increases. Finally, this section changes the calculation of lifeline adjustments.

PSC 160.062 (6)

This section adds provisions related to customers who are eligible for federal USF support as residents of tribal lands.

PSC 160.062 (9) (Changes in this section were made after the Council approved the draft rules)

This section adds provisions that require customer notification before ending lifeline assistance. This gives customers who no longer qualify as low-income under one criteria, but who still qualify under a different criteria, time to show that they qualify under that different criteria. These changes are based on changes adopted by the FCC.

PSC 160.062 (11)

This section is added so that local service providers file timely requests for reimbursements and so charges to the universal fund are not able to accumulate over several years.

PSC 160.063

In this section, the program is changed from a Request for Proposal (RFP) process to a biennial grant program. Offering the grant program will be determined by availability of funding. The grant program will be managed similarly to the other two grant programs in PSC 160, except that this program would be offered biennially. This will simplify the process for this program and will enable organizations that are focused on serving low-income customers to more easily apply for funding.

PSC 163.07

The requirement for a written medical description of special needs has been changed to allow such descriptions to be prepared by medical professionals rather than just by doctors. This change makes the language consistent with similar provisions elsewhere in the rules.

PSC 160.071

Service and Equipment Pricing for Individuals with Special Needs

Some minor editing changes and minor rule changes are made to improve program operation such as requiring eligible equipment lists and identifying processes to modify that list and to handle objections to the equipment lists and eligibility determinations. Specific program changes are discussed below.

PSC 160.071 (1) (b)

The voucher amount for the hard of hearing category is reduced from \$200 to \$125. This change reflects a determination made by the Commission on September 23, 2004, to reduce the hard of hearing voucher to \$125 because the Telecommunications Equipment Purchase Program (TEPP) exceeded its budget in FY04 and FY05.

The Commission based its decision to reduce the voucher maximum for the hard of hearing category on program data from the previous two fiscal years. If program changes were not made and the rate at which the program was growing continued at the pace it was in September 2004, the projected program expenditure was over \$4 million while the program budget was \$2.3 million. The hard of hearing disability category had experienced the most growth seeing more than a doubling of applications over two years (from 4,110 applications in FY 2003 to 8,274 in FY 2004).

PSC 160.071 (1) (c)

This section is amended to enable low-income speech, mobility or motion impaired voucher recipients to be exempt from the \$100 co-payment if they are able to certify that they meet the income requirements of the telecommunications assistance program (TAP), which provides the co-payment for low-income hard of hearing or deaf voucher recipients. In the past, low-income disabled voucher recipients that are speech, motion, or mobility impaired had no program for assistance in paying the \$100 co-payment that is required under the TEPP. This has been a barrier for some disabled individuals in obtaining the equipment needed to use the telecommunication system. The number of low-income disabled individuals that would qualify for waiving the \$100

co-pay requirement is expected to be small and not expected to significantly affect the TEPP budget.

PSC 160.071 (1) (i)

The addition will give the Commission the ability to impose consequences on vendors that abuse these programs.

PSC 160.071 (1) (k) 2. and 3.

These additions explicitly allow the purchase of a personal computer under the TEPP to serve as telecommunications equipment for individuals that have a medical statement indicating that such equipment is necessary for that individual to access telecommunications services.

PSC 160.071 (2)

This section deals with leasing specialized customer premises equipment for persons with disabilities. The only change is to make the program optional. While this is a very rarely used option, retaining the concept in the rule will provide flexibility to both providers and customers.

PSC 160.071 (3)

This section is significantly changed to reflect profound changes in the long distance sector of the telecommunications industry. The existing rule requires long distance companies to provide a discount to eligible disabled customers based on the formerly prevalent time-of-day rate discount schedules. These discounts are now outdated because options for long distance providers services and rates have changed with the advent of competition in long distance markets. The draft rule includes language changes to the required discount program so that it is optional for providers to provide the discount and provides the opportunity for providers to be reimbursed for the discount if certain conditions are met. The basis for providing TTY users with a discount is that for the same "conversation," a TTY user's telephone call lasts many times longer than a non-TTY user's telephone call. This discount helps bring TTY users' long distance costs closer to those of non-TTY users. For providers to be reimbursed, they must offer a discount program that results in a minimum of a 35 percent discount. Three options are included in the rule for how providers are able to offer discounts to TTY users. This allows flexibility for providers to choose how they can best offer a discount program to these customers within the constraints of their established billing systems.

PSC 160.071 (4)

This section of the rule relates to discounted wireless service and is similar in intent to the section above. Offering the discount to special needs customers is also optional. The only difference is that in this subsection the discount is applied to the total wireless bill.

PSC 160.071 (7) (b)

The section has two changes. First, this section enables speech impaired customers to receive, without charge, two-line hearing carryover services. This includes intrastate nonrecurring charges or the monthly rate for the second line. Second, a requirement for timely filing of reimbursement requests is added.

PSC 160.073 Public interest pay telephone

The section under par. (3) is added to ensure that when a provider has approval for installation of a new public interest pay telephone, that the telephone is installed in a reasonable timeframe.

The sections under (4) (d) through (g) and (5) (g) are added to further define where public interest pay telephones may or may not be located and places requirements on the operation of those telephones. The section under (6) was amended to clarify the level of detail required in financial records that public interest pay telephone providers must keep. The section under (7) was changed to allow more flexibility in

reporting and the section under (8) (d) was added so that public interest pay telephones are labeled as such.

The section under (9) is added to explicitly provide that the Commission may suspend or reduce payment to providers if there are problems with the operation of the public interest pay telephone.

PSC 160.09 High rate assistance credits

The revised rule clarifies how often the high rate assistance credits need to be calculated and defines how the average price of a one-minute intrastate toll call can be determined. It also eliminates the reference to Wisconsin Department of Workforce as the source for median household income since it does not publish such a number. Instead the revised rule references the figure published by the U. S. Census Bureau or as determined by the Commission. If the Commission determines this figure, there will be an opportunity for public comment.

This section also addresses when and how a commercial mobile radio (wireless) service provider's method of calculating high rate assistance credits will be established. Further, it adds certain FCC authorized charges to the pool of charges that are considered when determining whether a credit is owed.

A requirement for timely filing for reimbursement requests is also added.

PSC 160.092 Alternative universal service protection plans (Changes in this section were made after the Council approved the draft rules)

This section is amended to add plans to ensure interlata and intralata toll service, and other measures approved by the Commission to protect universal service, to the list of alternative plans that may be implemented. The existing "intralata toll provider of last resort" section is being deleted from the rule. This amendment allows the Commission to establish a similar (but experimental and limited) program should it become necessary in the future. Such a plan can only be implemented after notice and opportunity for hearing.

PSC 160.10 Rate shock mitigation

A requirement for timely filing for reimbursement requests is added to this section.

PSC 160.11 Assistance to institutions

The section of the rule for the institutional discount program is eliminated. This program was replaced by TEACH, now known as the Educational Telecommunications Access Program. The existing rule allowed continued funding until October 29, 2002, for institutions already in the program. However, as of the beginning of FY2002, no institutions remained in the program.

PSC 160.115

Medical telecommunications equipment program. The term "medical clinic" is clarified to include clinics and hospitals.

This section now includes the terms "directly or indirectly" to clarify that applications, such as those for equipment that improves the efficiency of the medical clinic and so improve patient health care, are eligible for this grant program.

This section changes "will" to "may" in par. (5)(c) since it may be premature for some applicants to have selected their final vendor when applications are filed.

PSC 160.125 (2) Funding to promote access to telecommunications services.

While funding for the projects is provided on a fiscal year basis, this section is changed so that more than one year of funding may be approved when the Commission is awarding grants. This gives flexibility to the Commission to approve

multi-year projects if it determines that the success of the program is dependant upon multi-year funding.

Dates for when applications are submitted and awarded are eliminated to give the Commission more flexibility and to recognize that the biennial budget needs to be approved prior to awarding grants.

The matching fund requirement of grant applicants is reduced from 50 percent to 25 percent. With a less stringent matching requirement, more applicants will be able to apply for the grants. Language is also added to clarify that in-kind goods or services may be used to meet the grant matching requirement.

PSC 160.13 Designation of eligible telecommunication carriers (Changes in this section were made after the Council approved the draft rules)

A change is made to (1) (a) to clarify that commercial mobile radio service providers can be designated as eligible telecommunication carriers (ERCs). Section (1) (e) is created to merge the existing pay telephone requirements in Wis. Admin. Code chs. PSC 160 and PSC 165. It also allows multiple ETCs to share in the provision of the required pay telephone.

A change was also made to the section defining the territory for which a provider is designated as an ETC. It is changed to indicate that in a non-rural territory the area may not be smaller than a wire center. For rural companies it is changed to indicate that it cannot include only a portion of a wire center. These changes are made to conform with FCC orders.

PSC 160.14 Intralata toll service provider of last resort

This section is deleted. This issue is dealt with in the amendment to PSC 160.092.

PSC 160.15 Identification of charges

This section is amended to conform with existing law concerning identification of the portion of local exchange rates that are for recovery of certain mandatory USF contributions. A new provision is also created stating that adjustments to local exchange rates made more than four months after a new USF assessment rate goes into effect will not be considered to be for the purpose of recovering contributions to the USF. This provision precludes a company from representing on customer bills that a rate adjustment is due to an increase in its USF assessment if the rate increase occurs too long after the actual change in assessment.

PSC 160.17 Fund budget and assessment rates.

A requirement is added that, like it does with the department of administration and the TEACH program, the Commission must consult with the department of public instruction (DPI) before determining the amount budgeted for certain programs DPI administers.

PSC 160.18 Collection of universal service fund monies

The language that established the procedure for the (now passed) initial USF assessment of commercial mobile radio service providers is deleted.

Clarification is added regarding the procedure for objecting to an assessment and how assessment collections will be "trued up" from year to year as customer numbers and company revenues change.

PSC 160.19 Universal Service Fund Council

The requirement for institutional representatives on the USFC has been removed. This was a vestige of the time when the universal service fund rules included an "aid to institutions" program.

Changes to rules other than PSC 160

PSC 161.05 (4)

This provision is deleted because the rule section it references is being repealed,

PSC 165.043 (4)

This provision is amended to add a requirement that notice be provided to customers, in situations where line power is not provided to the network interface device, that service may be affected if there is a power failure. Historically, customers that have their telephone line through telephone wiring in a home are accustomed to telephones functioning even if there is a commercial power outage. This addition would provide notice to those customers that loss of electric power may also affect telephone service. While in early rule drafts this was located in the list of “essential services” in s. PSC 160.03(2), it was decided that it made more sense to locate this in the consumer protection rules.

PSC 165.088

This provision is being deleted. The issue is dealt with through PSC 160.13 (1) (e).

PSC 171.06 (1)

This provision is amended to clarify that cable television telecommunications service providers are subject to s. 196.218, Stats. This updates the provision to conform with existing law.

Comparison with Existing or Proposed Federal Regulations

There is both a state USF and a federal USF. The state and federal funds and programs are complementary rather than duplicative.

“Eligible Telecommunications Carriers” (ETCs) are designated by the Commission and are, thereafter, eligible for funding from the federal USF and for certain funding from the state USF. ETC status was created by the FCC, and codified in 47 U.S.C. § 214 (e) (2). Under FCC rules, the state Commissions are required to designate providers as ETCs.³

Designation as an ETC is required if a provider is to receive federal USF funding. ETC designation is also required to receive funding from some, but not all, state universal service programs. The FCC established a set of minimum criteria that all ETCs must meet. These are codified in the federal rules.⁴ The 1996 Telecommunications Act states that “States may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service.”⁵ A court upheld the states’ right to impose additional conditions on ETCs in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999). Therefore, while states must examine the federal requirements, they are allowed to create additional requirements. Wisconsin has done so. The Commission’s requirements for ETC designation clarify and expand upon the more basic FCC rules.

The federal USF provides funding to ETCs that are found to serve high-cost areas. That funding is to be used to help cover the costs of expanding infrastructure into those areas. Doing so should help ensure that rates in those areas stay lower since rates need not provide the funds for that expansion. The Wisconsin USF provides funding to providers with high rates for credits provided to customers. The federal USF also includes lifeline and link-up programs. The Wisconsin Lifeline and Link-Up programs are structured to take maximum advantage of the available federal lifeline and link-up funds.

The federal USF assessment applies to all carriers, including wireless carriers, and is assessed based on interstate revenues. The state USF assessment applies to all providers, including wireless providers (although that assessment is currently suspended) and is assessed based on intrastate revenues. Wisconsin exempts certain providers from assessment, such as those with under \$200,000 in intrastate revenues.

³ 47 U.S.C. § 214 (e) (2), 47 C.F.R. § 54.201 (b).

⁴ 47 U.S.C. § 214 (e) (1), 47 C.F.R. § 54.101 (a).

⁵ 47 U.S.C. § 254 (f).

Fiscal Estimate

The proposed rule is required to be reviewed periodically by Wis. Stat. 196.218. The rules changes being proposed are intended to continue and enhance the general purposes of the USF statutes and will not add to or subtract from the grants and costs to manage the USF programs.

Comparison with Similar Rules in Adjacent States

The following discussion focuses on areas where significant changes are being made to the USF rules.

Many state USF programs, both in Wisconsin and in other states, are intertwined with federal universal service programs. As a result, there is a certain amount of similarity among state programs. For example, each of the surrounding states has Lifeline and Link-Up type programs.⁶ As required under federal law, each has income-based eligibility criteria although the specifics vary somewhat. The level of credits to customers and the resulting reimbursements to providers are similar, due in part to the federal matching dollars attached to credit/reimbursement levels. A difference in Link-up programs is that the Wisconsin program will pay for whatever nonrecurring installation costs are not paid for under the federal program. In each of the surrounding states the potential exists for a low-income customer to have to pay for a portion of the installation charges (although three of them also require that any additional amount be eligible for an interest free deferred payment arrangement.) A difference in Lifeline programs is that the four other states have a set figure for the Lifeline credit/reimbursement amount (although in Michigan that amount may vary depending on which company is involved). Wisconsin also has a set amount if the base rate⁷ is \$25 or below. If the base rate is \$25 or above, the reimbursement/credit is whatever amount is necessary to bring that base rate to \$15. In this way, low-income customers in higher cost (generally rural) areas receive a credit sufficient to bring the base rate to a reasonably affordable level.

Wisconsin also has a program that helps provide access to telecommunications service for persons with hearing, speech and/or mobility disabilities. TEPP provides vouchers to help persons with disabilities that impair their ability to use standard telecommunications equipment to access telecommunications service, obtain equipment that will assist them in doing so. Iowa, Illinois, and Minnesota each have similar programs although the specifics vary. For example, Illinois’ program is limited to those with hearing or speech disabilities, and in Minnesota the equipment belongs to the state and must be returned if the customer leaves the state or loses his/her phone line.

Wisconsin was the first and is still only one of three states that have a Public Interest Pay Telephone program.⁸ The programs of both other states are modeled, in very large part, on the Wisconsin program. This is the first rulemaking since the program was implemented in Wisconsin and the changes made in this rulemaking are based on the experience gained during the first few years of the program.

Wisconsin also has a program to help lower the monthly cost of telephone service in areas of the state where rates are high. In determining whether assistance under this “high rate assistance” program is required, the program looks both at the rate for basic service and what percentage of a county’s median household income that rate entails. Although its commission must vote to activate it, Michigan statutes provide for a similar program that would provide a subsidy to customers of the difference between an affordable rate and the

company's forward looking economic cost of providing service (should the latter be higher than the former). Illinois has a high-cost program that provides support to small telecommunication providers if the economic costs of providing certain services exceed the affordable rate set for those services.

⁶Lifeline helps pay the monthly cost of telephone service. Link-up helps pay the cost of service installation.

⁷The "base rate" is the monthly residential rate including touch-tone service, 911 charges on the telephone bill, the federal subscriber line charge, and 120 local calls.

⁸The other two states are Alaska and Hawaii.

Notice of Hearing Regulation and Licensing [CR 06-069]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Wis. Stats., and ch. 460, Wis. Stats., and interpreting Wis. Stats. Chapter 460, 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 90.02 (3) and (9), 91.03 (1) (c) 3., 5. and 6., 92.01 (3) and 92.02; to renumber and amend RL 91.01 (3) (b) to (f) and 91.03 (2); to amend RL 90.01, 90.02 (2), (6) and (8), 91.01 (title), (intro.) and (2), 91.03 (title), (1) (intro.) and (1) (c) 1., 4. and 7., 91.04, 92.01 (title), (1), (2), (4) (intro.), (a), (b), (5) (intro.), (b), (d) and (e), 93.01 (title) and 93.01, 93.02 (title), (intro.), (2) and (3), 93.03, 93.04 (intro.) and (1) (c), 94.01 (title), (intro.), (6), (9), (16), (19), (20), (26), (27) and (28); to repeal and recreate RL 90.02 (1) (b), 91.01 (3) (a) and 91.03 (1) (c) 2.; and to create RL 90.02 (1g), (1r), (5m), (10) to (13), a Note following RL 91.01 (3) (a), 91.01 (b) to (e), 91.015, 91.03 (1) (c) 8. and (2) (a) and (b), 91.05, a Note following RL 94.01 (27), RL 94.01 (29) to (32) and 94.02, relating to application requirements, definitions, certification, reciprocity, waiver of education requirements and unprofessional conduct, governing the certification of massage therapists and bodyworkers.

Hearing Date, Time and Location

Date: July 14, 2006
Time: 9:00 A.M.
Location: 1400 East Washington Avenue
Room 123
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 Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708, or by email to pamela.haack@drl.state.wi.us. Written comments must be received on or before July 21, 2006 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes interpreted: Wis. Stats. Chapter 460.

Statutory authority: Section 227.11 (2), Stats., and ch. 460, Stats.

Explanation of agency authority:

2001 Wisconsin Act 74 recreated the credentialing and practice requirements for the practice of massage therapy and bodywork in the state of Wisconsin. The proposed rule revisions to Wis. Admin. Code Chapters RL 90 to 94 are intended to update these administrative rules for consistency with 2001 Wisconsin Act 74.

Related statute or rule:

Wis. Admin. Code chapters RL 90 to 94.

Plain language analysis:

The proposed revisions to Chapters RL 90 to 94 are necessary to implement Chapter 460 of the Wisconsin Statutes pursuant to 2001 Wisconsin Act 74, governing the certification of massage therapists and bodyworkers. The proposed rules will in part modify the requirements necessary for qualified applicants, reciprocal certification, acceptable training programs, waivers of education requirements, renewals, acts constituting unprofessional conduct, and the handling of complaints by the department relating to specified allegations of sexual misconduct.

SECTION 1 changes "registration" to "credentialing."

SECTION 2 repeals and recreates language relating to application requirements which must be met for a credential to be issued.

SECTION 3 creates two new definitions – "approved training program" and "certificate holder."

SECTION 4 amends the definition of "classroom hour."

SECTION 5 repeals the definition of "course of instruction."

SECTION 6 creates the definition of "insured."

SECTION 7 amends the definitions of "manual action" and "massage therapy or bodywork."

SECTION 8 repeals the definition of "registrant."

SECTION 9 creates definitions of "policyholder," "sexual contact," "sexual intercourse" and "sexually oriented business."

SECTION 10 changes "registration" to "a certificate."

SECTIONS 11, 13 and 14 make changes relating to application requirements which must be met for a credential to be issued.

SECTION 12 creates a note indicating where to find a list of approved schools.

SECTION 15 creates s. RL 91.015, relating to the waiver of education requirements necessary for a credential to be granted.

SECTIONS 16, 17, 18, 19, 20, 21, 22, 23 and 24 make changes relating to the requirements for the granting of a reciprocal certificate and defines that the requirements for a current similar license, registration or certificate to practice massage therapy or bodywork in another state or territory of the United States or another country, are substantially equivalent to the requirements under s. 460.05, Stats., if the requirements include certification by the National Certification Board for Therapeutic Massage and Bodywork or any other organization accredited by the National Commission for Certifying Agencies to certify massage therapy or bodywork; or completion of at least 500 classroom hours of instruction in massage therapy or bodywork at a school approved by an accrediting agency.

SECTION 25 changes "registration" to "certification."

SECTION 26 creates s. RL 91.05, a grandfathering provision for the granting of a certificate as a massage therapist or bodyworker.

SECTION 27 amends s. RL 92.01, to include new requirements for an approved training program.

SECTION 28 repeals a provision that is no longer necessary.

SECTION 29 amends s. RL 92.01 (4), to include new requirements for an approved training program.

SECTION 30 repeals a provision that is no longer necessary.

SECTIONS 31, 32, 33 and 34 amend rules relating to renewal and conform the nomenclature of these sections to Chapter 460, Stats.

SECTION 35 amends the title of s. RL 93.01 from "Violations of standards of practice" to "Unprofessional conduct." Section RL 94.01 (6) is amended relating to the requirements for obtaining informed consent from a patient. Section RL 94.01 (9) is amended relating to the failure to keep confidential information received from a client. Section RL 94.01 (16) is amended relating to the failure by a credential holder to cooperate in a timely manner with the department's investigation of complaints filed against a credential holder. Section RL 94.01 (19) is amended to change a reference from "registrant" to "certificate holder." Section RL 94.01 (20) is amended to change a reference from "unregistered" to "uncertified." Section RL 94.01 (26) is amended relating to the failure to maintain premises according to standards recognized by the massage therapy or bodywork profession. Section RL 94.01 (27) is amended relating to a certificate holder notifying the department for the conviction of a crime.

SECTION 36 creates a note where complaint forms may be obtained.

SECTION 37 deletes "of registration" in s. RL 94.01 (28) deletes.

SECTION 38 creates additional violations of unprofessional conduct. Section RL 94.01 (29) is created to prohibit practicing massage therapy or bodywork, whether for compensation or not, for a sexually oriented business. Section RL 94.01 (30) is created to prohibit having sexual contact or sexual intercourse with a client that occurs on or after March 1, 2003. Section RL 94.01 (31) is created relating to the failure to make a report as required under s. RL 94.02. And s. RL 94.01 (32) is created to clarify permissible advertising by a certificate holder.

SECTION 39 creates s. RL 94.02 relating to the submission of reports to the department if a certificate holder has reasonable cause to believe that another certificate holder has committed a crime relating to prostitution under ss. 944.30 to 944.34, Stats., or has had sexual contact or sexual intercourse with a client.

Summary of, and comparison with, existing or proposed federal regulation:

No federal regulation exists.

Summary of factual data and analytical methodologies:

The provisions of 2001 Wisconsin Act 74 and 2005 Wisconsin Act 25 were reviewed to determine the appropriate provisions of then existing Wis. Admin. Code Chapters RL 90 to 94 which required amending for conformity. 2001 Wisconsin Act 74 and 2005 Wisconsin Act 2005 also required the creation of new rule provisions in Chapters RL 90 to 94. The proposed rules were submitted to the Massage Therapy and Bodyworker Council for review and comments as required by s. 460.04 (3), Stats.

Massage Therapy and Bodyworker Council Comments – (April 13, 2004)

MOTION: Amy Remillard moved, seconded by Mary Ellen Martin, to change the three hours [education requirements] from CPR to a science portion of the rules. Motion carried unanimously.

Department response: change made.

MOTION: Amy Remillard moved, seconded by Vlad Thomas, to change the rule [informed consent] to read, "practice massage therapy or body work on a client without first obtaining the written informed consent of the client and has informed the client they may withdraw at any time." Motion carried unanimously at today's meeting.

Department response: change made.

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

The proposed amendments to the department's administrative rules, Chapters RL 90 to 94, represent a recodification and clarification of existing administrative rules of the department. These amended rules do not represent any significant change in terms of increasing or decreasing existing requirements on the certification of governance of Massage Therapist and Bodyworkers, therefore no additional effect on small business or economic impact is anticipated.

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 department estimates that this rule will require staff time in the Division of Professional Credentialing. The total staff salary and fringe is estimated at \$230.

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.

Contact Person

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

Written Comments

Comments may be submitted to Pamela Haack at the Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 89235, Madison, Wisconsin 53708-8935. Email to pamela.haack@drl.state.wi.us. Comments must be received on or before July 21, 2006, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. RL 90.01 is amended to read:

RL 90.01 Authority and intent. The rules in chs. RL 90 to 94 are adopted by the department pursuant to ss. s. 227.11 (2), Stats., and 440.982 ch. 460, Stats., to govern the registration credentialing of massage therapists and bodyworkers.

SECTION 2. RL 90.02 (1) (b) is repealed and recreated to read:

RL 90.02 (1) (b) A state government agency or territorial government agency located in another state or territory of the United States or another country.

SECTION 3. RL 90.02 (1g) and (1r) are created to read:

RL 90.02 (1g) "Approved training program" means a series of classroom courses, not including continuing education, which is approved by the department having a unified purpose which led to a diploma or degree or to an occupational or vocational objective, meeting the requirements of s. RL 92.01.

(1r) "Certificate holder" means a person granted a certificate under ch. 460, Stats.

SECTION 4. RL 90.02 (2) is amended to read:

RL 90.02 (2) "Classroom hour" means a period of instruction in an approved course consisting of not less than 50 minutes.

SECTION 5. RL 90.02 (3) is repealed.

SECTION 6. RL 90.02 (5m) is created to read:

RL 90.02 (5m) "Insured" means any person to whom or for whose benefit an insurer makes a promise in an insurance policy. The term includes policyholders, subscribers, members, and beneficiaries.

SECTION 7. RL 90.02 (6) and (8) are amended to read:

RL 90.02 (6) "Manual action" includes holding, positioning, rocking, kneading, compressing, decompressing, gliding or percussing the soft tissue of the human body and or applying friction to soft tissue a passive range of motion to the human body.

(8) "Massage therapy or bodywork" means the science and healing art that uses manual actions to palpate and manipulate the soft tissue of the human body, in order to improve circulation, reduce tension, relieve soft tissue pain or increase flexibility, and includes determining whether massage therapy or bodywork is appropriate or contraindicated, or whether referral to another health care practitioner is appropriate. Massage therapy or bodywork does not include making a medical or chiropractic diagnosis or instructing in or prescribing rehabilitative strengthening or conditioning exercises that are within the practice of physical therapy, as defined in s. 448.50 (4), Stats.

SECTION 8. RL 90.02 (9) is repealed.

SECTION 9. RL 90.02 (10) to (13) are created to read:

RL 90.02 (10) "Policyholder" means the person who controls the policy by ownership, payment of premiums, or otherwise.

(11) "Sexual contact" has the meaning given in s. 939.22 (34), Stats.

(12) "Sexual intercourse" has the meaning given in s. 948.01 (7) (a), Stats.

(13) "Sexually oriented business" means keeping a place of prostitution as defined in s. 944.34, Stats.

SECTION 10. RL 91.01 (title), (intro.) and (2) are amended to read:

RL 91.01 (title) Application for registration a certificate. (intro.) An individual applying for registration a certificate as a massage therapist or bodyworker shall submit all of the following:

(2) The fee required specified in s. 440.05 (1), Stats.

SECTION 11. RL 91.01 (3) (a) is repealed and recreated to read:

RL 91.01 (3) (a) Has graduated from a school of massage therapy or bodywork approved by the educational approval board at the time of the applicant's graduation or completed an approved training program as described in s. RL 92.01.

SECTION 12. A Note following RL 91.01 (3) (a) is created to read:

Note: A list of approved schools is available upon request to the Educational Approval Board at 30 West Mifflin Street, 9th Floor, P.O. Box 8696, Madison, Wisconsin 53708, or the department at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 13. RL 91.01 (3) (b), (c), (d), (e) and (f) are renumbered RL 91.01 (3) (f), (i), (g), (h) and (j), and as renumbered RL 91.01 (3) (f), (g), (i) and (j) are amended to read:

RL 91.01 (3) (f) Subject to ss. 111.321, 111.322 and 111.335, Stats., ~~does not have a conviction record~~ has not been convicted of any other offense not listed in par. (e), the circumstances of which substantially relate to the practice of massage therapy or bodywork.

(g) Has passed either the national certification examination for therapeutic massage and bodywork or the national certification examination for therapeutic massage that are offered by the national certification board for therapeutic massage and bodywork, or a substantially equivalent another examination approved relating to the practice of massage therapy or bodywork that is administered by a national board that is accredited by the national commission of certifying agencies ~~of the national organization for competency assurance or that is developed, administered or a substantially equivalent examination~~ approved by the department relating to the practice of massage therapy or bodywork.

(i) Has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(j) Has successfully completed a course consisting of 8 5 classroom hours in adult cardiopulmonary resuscitation and standard first aid, ~~unless if the individual has not graduated from a school of massage therapy or bodywork approved by the educational approval board and the 8 5 classroom hours are not completed as part of a course of instruction by the individual as part of an approved training program~~ as provided under s. RL 92.01 ~~(5)(e)~~ (4) (f).

SECTION 14. RL 91.01 (3) (b) to (e) are created to read:

RL 91.01 (3) (b) Has successfully completed at least 6 classroom hours of study in the laws of this state and rules of the department relating to the practice of massage therapy or bodywork in a course of instruction offered by any of the following:

1. A school of massage therapy or bodywork approved by the educational approval board, whether or not the course of instruction was completed to meet a requirement for graduation.

2. An approved training program whether or not the training program is completed by the individual for purposes of satisfying par. (a).

3. A school approved by an accrediting agency.

4. A technical college established pursuant to s. 38.02, Stats.

(c) Is 18 years of age or older.

(d) Has graduated high school or attained high school equivalency as determined by the department of public instruction under s. 115.29 (4), Stats.

(e) Has not been convicted of an offense under s. 940.22, 940.225, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.025, 948.08, 948.09, 948.095 or 948.10, Stats., or a comparable offense under federal law or a law of any other state.

SECTION 15. RL 91.015 is created to read:

RL 91.015 Waiver of education requirements. A requirement of s. RL 91.01 (3) (a) and (b) shall be waived if

an individual submits evidence satisfactory to the department that he or she has successfully completed a course consisting of 5 classroom hours in adult cardiopulmonary resuscitation and standard first aid and satisfied one of the following:

(1) Is currently either certified or recertified by the national certification board for therapeutic massage and bodywork.

(2) Is currently either certified or recertified as active and in good standing by any other organization accredited to certify massage therapy or bodywork by the national commission for certifying agencies.

SECTION 16. RL 91.03 (title), (1) (intro.) and (1) (c) 1. are amended to read:

RL 91.03 (title) Reciprocal registration certificate. (1) (intro.) An individual applying for ~~registration a certificate~~ on the basis of a similar license, registration or ~~certification certificate~~ in another state or ~~jurisdiction territory~~ of the United States or another country shall:

(c) 1. Holds a current similar license, registration or certificate to practice massage therapy or bodywork in another state or ~~jurisdiction territory~~ of the United States or another country, the requirements for which are substantially equivalent to the requirements under s. 460.05, Stats.

SECTION 17. RL 91.03 (1) (c) 2. is repealed and recreated to read:

RL 91.03 (1) (c) 2. Has not been convicted of an offense under s. 940.22, 940.225, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.09, 948.095 or 948.10, Stats., or a comparable offense under federal law or a law of any other state.

SECTION 18. RL 91.03 (1) (c) 3. is repealed.

SECTION 19. RL 91.03 (1) (c) 4. is amended to read:

RL 91.03 (1) (c) 4. Subject to ss. 111.321, 111.322 and 111.335, Stats., ~~does not have an arrest or conviction record~~ has not been convicted of any other offense not listed under subd. 2., the circumstances of which substantially relate to the practice of massage therapy or bodywork.

SECTION 20. RL 91.03 (1) (c) 5. and 6. are repealed.

SECTION 21. RL 91.03 (1) (c) 7. is amended to read:

RL 91.03 (1) (c) 7. Has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

SECTION 22. RL 91.03 (1) (c) 8. is created to read

RL 91.03 (1) (c) 8. Has not engaged in conduct while practicing massage therapy or bodywork that jeopardizes the health, safety, or welfare of a client or that evidences a lack of knowledge of, inability to apply, or the negligent application of, principles or skills of massage therapy or bodywork.

SECTION 23. RL 91.03 (2) is renumbered RL 91.03 (2) (intro.) and is amended to read:

RL 91.03 (2) (intro.) ~~In determining whether to grant a reciprocal registration, the department shall consider whether the requirements~~ Requirements for a current similar license, registration or certificate to practice massage therapy or bodywork in the other another state or jurisdiction are similar to the requirements for registration as a massage therapist or bodyworker in this state: territory of the United States or another country, are substantially equivalent to the requirements under s. 460.05, Stats., if the requirements include either of the following:

SECTION 24. RL 91.03 (2) (a) and (b) are created to read:

RL 91.03 (2) (a) Certification by the national certification board for therapeutic massage and bodywork or any other

organization accredited by the national commission for certifying agencies to certify massage therapy or bodywork.

(b) Completion of at least 500 classroom hours of instruction in massage therapy or bodywork at a school approved by an accrediting agency, and passing an examination relating to the practice of massage therapy or bodywork that is administered or approved by an accrediting agency.

SECTION 25. RL 91.04 is amended to read:

RL 91.04 Accommodations relating to a disability. A qualified individual with a disability shall be provided with reasonable accommodations requested in connection with the completion of an application for ~~registration~~ certification as a massage therapist or bodyworker.

SECTION 26. RL 91.05 is created to read:

RL 91.05 Alternate certification. The department shall grant a certificate as a massage therapist or bodyworker to a person who satisfies all of the following:

(1) Is 18 years of age or older.

(2) Has graduated high school or attained high school graduation equivalency as determined by the department of public instruction under s. 115.29 (4), Stats.

(3) Submits an application for the certificate to the department on a form provided by the department.

(4) Has paid the fee specified in s. 440.05 (1) (a), Stats.

(5) Submits evidence satisfactory to the department that the person has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(6) Has not been convicted of an offense under s. 940.22, 940.225, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.09, 948.095 or 948.10, Stats., or a comparable offense under federal law or a law of any other state.

(7) Submits evidence satisfactory to the department that, during the 2 year period after March 1, 2003, the person was actively engaged in the practice of massage therapy or bodywork. In this section, "active practice" means having engaged in at least 1500 hours of the practice of massage therapy or bodywork during the 2 year period after March 1, 2003.

(8) Attests that he or she only recently became aware of the requirements of ch. 460, Stats.

SECTION 27. RL 92.01 (title), (1) and (2) are amended to read:

RL 92.01 (title) ~~Course of instruction Approved training program.~~ (1) An individual applying for ~~registration a certificate~~ as a massage therapist or bodyworker and who has not graduated from a school of massage therapy or bodywork approved by the educational approval board shall submit an official transcript or other official documentation showing dates and total hours attended and a description of the curriculum completed establishing that he or she has completed at least 600 classroom hours of study in ~~a course of instruction~~ an approved training program.

(2) Credit may be granted for ~~a course of instruction~~ an approved training program regardless of when the ~~instruction program~~ was completed.

SECTION 28. RL 92.01 (3) is repealed.

SECTION 29. RL 92.01 (4) (intro.), (a), (b), (5) (intro.), (b), (d) and (e) are amended to read:

RL 92.01 (4) (intro.) In addition to satisfying the requirements of sub. (4) (5), ~~a course of instruction that is approved by the department~~ an approved training program shall be one of the following:

(a) An associate degree program, or a vocational technical diploma program in massage therapy or bodywork offered by a technical college established pursuant to s. 38.02, Stats.

(b) A course of instruction in massage therapy or bodywork offered by a school accredited by an accredited agency at the time the individual completes the course of instruction.

(5) (intro.) An approved course of instruction consisting training program shall consist of a minimum of 600 classroom hours of study and shall include the following subject areas:

(a) Anatomy, physiology, pathology and kinesiology: ~~122~~ 125 classroom hours.

(b) Business, law and ethics: 50 classroom hours, which may include at least 6 classroom hours in the laws of this state and rules of the department relating to the practice of massage therapy or bodywork required by s. RL 91.01 (3) (b).

(e) Adult cardiopulmonary resuscitation (CPR) and standard first aid: 8 ~~5~~ classroom hours. The requirement of this paragraph may be alternatively satisfied as provided under s. RL 91.01 (3) (f) (j).

SECTION 30. RL 92.02 is repealed.

SECTION 31. RL 93.01 (title) and 93.01 are amended to read:

RL 93.01 (title) Registration Certificate expiration. Registration Certificates for massage therapists and bodyworkers expires expire on March 1 of each odd-numbered year.

SECTION 32. RL 93.02 (title), (intro.), (2) and (3) are amended to read:

RL 93.02 (title) Renewal of registration certificate. (intro.) In order to renew a registration certificate on or before the renewal date, the registrant certificate holder shall submit the following to the department:

(2) The renewal fee required under s. 440.08 (2) (a) ~~67c.~~ 46r., Stats.

(3) Evidence satisfactory to the department that he or she has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

SECTION 33. RL 93.03 is amended to read:

RL 93.03 Failure to renew. A registrant certificate holder who fails to renew a registration certificate by the applicable renewal date shall not use any title or description that implies that he or she is registered credentialed by the department as a massage therapist or bodyworker until his or her registration certificate is renewed under s. RL 93.04.

SECTION 34. RL 93.04 (intro.) and (1) (c) are amended to read:

RL 93.04 Late renewal. (intro.) A massage therapist or bodyworker who fails to renew his or her registration certificate by the renewal date may renew the registration certificate by satisfying all of the following requirements:

(1) (c) Evidence satisfactory to the department that he or she has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

SECTION 35. RL 94.01 (title), (intro.), (6), (9), (16), (19), (20), (26) and (27) are amended to read:

RL 94.01 (title) Violations of standards of practice Unprofessional conduct. (intro.) The following, without limitation because of enumeration, are violations of the standards of practice for massage therapists and bodyworkers

professional conduct and constitute unprofessional conduct under s. 460.14 (2) (g), Stats.:

(6) ~~Failing to obtain and record Practicing massage therapy or bodywork on a client without first obtaining the written informed consent of the client or the client's authorized representative before initiating a plan of treatment and informing the client in writing that he or she may withdraw the consent at any time.~~

(9) ~~Failing to maintain the confidentiality of all client information, unless disclosure is required by law or court order keep confidential any information that a client gives in confidence to the certificate holder and any other information that the certificate holder obtains about a client in the course of practicing massage therapy or bodywork that a reasonable person in the client's position would want kept confidential, unless the information is otherwise required by law to be disclosed or the client specifically authorizes the disclosure of the information.~~

(16) After a request by the department, failing to cooperate in a timely manner with the department's investigation of complaints filed against the individual or registrant certificate holder. There is a rebuttable presumption that a registrant or individual certificate holder who takes longer than 30 calendar days to respond to a request of the department has not acted in a timely manner under this subsection.

(19) Failing to practice massage therapy or bodywork within the scope of the registrant's certificate holder's competence, education, training and experience.

(20) Aiding or abetting an unregistered uncertified person, knowingly conspiring with an unregistered uncertified person, or allowing one's registration certificate to be used by an unregistered uncertified person to evade the use of title restrictions under ch. 440 ~~460~~, Stats., relating to the practice of massage therapy or bodywork.

(26) Failing to maintain premises according to standards recognized by the massage therapy or bodywork profession or to standards established by local regulation, whichever standard is higher.

(27) Failing to notify the department of any criminal conviction within 30 calendar days after the date of conviction submit a written report to the department if the certificate holder is convicted of a felony or misdemeanor, or is found to have committed a violation, in this state or elsewhere, if the circumstances of the felony, misdemeanor or violation substantially relate to the practice of massage therapy or bodywork. The report shall be made on a complaint form provided by the department and shall be submitted within 30 days after the entry of the judgment of conviction or the judgment that the certificate holder committed the violation, and shall identify the date, place, and nature of the conviction or finding. If the report is submitted by mail, the report is considered to be submitted on the date that it is mailed. In this subsection, "violation" means a violation of any state or local law that is punishable by a forfeiture.

SECTION 36. A Note following RL 94.01 (27) is created to read:

Note: Complaint forms are available from the Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or from the department's website at: <http://drl.wi.gov>.

SECTION 37. RL 94.01 (28) is amended to read:

RL 94.01 (28) Failing to display his or her certificate of registration in his or her place of business or practice so that it can easily be seen and read by the public.

SECTION 38. RL 94.01 (29) to (32) are created to read:

RL 94.01 (29) Practicing massage therapy or bodywork, whether for compensation or not, for a sexually oriented business.

(30) Having sexual contact or sexual intercourse with a client that occurred on or after March 1, 2003.

(31) Failing to make a report as required under s. RL 94.02.

(32) Advertising by a certificate holder that he or she practices massage therapy or bodywork unless the advertisement includes his or her certificate number and a statement that the certificate holder is a "certified massage therapist or bodyworker" or "certified massage therapist" or "certified bodyworker." A telephone directory listing for which no additional advertising charge is made is not considered advertising.

SECTION 39. RL 94.02 is created to read:

RL 94.02 Duty to make reports. (1) A certificate holder shall submit a report to the department if he or she has reasonable cause to believe that another certificate holder has committed a crime relating to prostitution under ss. 944.30 to 944.34, Stats., or has had sexual contact or sexual intercourse with a client. If the report relates to sexual contact or sexual intercourse with a client, the report may not identify the client unless the client has provided written consent for disclosure of this information.

(2) For purposes of this section, "reasonable cause" means any of the following:

(a) Being informed by a person that he or she has engaged in an act with another certificate holder prohibited by ss. 944.30 to 944.34, Stats.

(b) Being informed by a person that he or she, while a client of another certificate holder, engaged in nonmarital sexual contact or sexual intercourse with the other certificate holder.

(c) Being informed by another certificate holder that he or she has engaged in nonmarital sexual contact or sexual intercourse with a client, or has done an act prohibited by ss. 944.30 to 944.34, Stats.

(3) The report shall be made on a complaint form provided by the department. The department may use the report as the basis for an investigation under s. 460.14 (1), Stats.

Note: Complaint forms are available from the Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or from the department's website at: <http://drl.wi.gov>.

(4) A complaint as defined in s. RL 2.03 (2), filed against a certificate holder pursuant to s. RL 2.08, based upon the allegation of one or more acts prohibited under ss. 944.30 to 944.34, Stats., constitutes reasonable cause for the department to believe that a certificate holder has committed a crime and the department shall report the belief to the district attorney for the county in which the crime, in the opinion of the department, occurred.

Notice of Hearing Transportation [CR 06-068]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., interpreting s. 348.07 (4), Stats., the Department of Transportation will hold a public hearing at the following location to consider the amendment of chapter Trans 276, Wisconsin Administrative Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways:

July 12, 2006

Department of Transportation
Hill Farms State Transportation Office
Room 501, Eau Claire Room
Madison, WI
10:00 AM

(Parking is available for persons with disabilities)

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

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 85.16 (1) and 348.07 (4), Stats.

Statute Interpreted: s. 348.07 (4), Stats.

Plain Language Analysis and Summary of, and Preliminary Comparison with, Existing or Federal Regulation. In the Surface Transportation Assistance Act of 1982 (STAA), the federal government acted under the Commerce clause of the United States Constitution to provide uniform standards on vehicle length applicable in all states. The length provisions of STAA apply to truck tractor-semitrailer combinations and to truck tractor-semitrailer-trailer combinations. (See Jan. 6, 1983, Public Law 97-424, § 411) The uniform standards provide that:

- No state shall impose a limit of less than 48 feet on a semitrailer operating in a truck tractor-semitrailer combination.

- No state shall impose a length limit of less than 28 feet on any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination.

- No state may limit the length of truck tractors.

- No state shall impose an overall length limitation on commercial vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations.

- No state shall prohibit operation of truck tractor-semitrailer-trailer combinations.

The State of Wisconsin complied with the federal requirements outlined above by enacting 1983 Wisconsin Act 78 which amended § 348.07 (2), Stats., and § 348.08 (1), Stats. This act created §§ 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created § 348.07 (2) (gr), Stats., to add 53 foot semitrailers as part of a two vehicle combination to the types of vehicles that may operate along with STAA authorized vehicles. (See 1985 Wisconsin Act 165)

The vehicles authorized by the STAA may operate on the national system of interstate and defense highways and on those federal aid primary highways designated by regulation of the secretary of the United States Department of Transportation. In 1984 the USDOT adopted 23 CFR Part 658 which in Appendix A lists the highways in each state upon which STAA authorized vehicles may operate. Collectively these highways are known as the National Network. In 1983 Wisconsin Act 78, the legislature enacted § 348.07 (4), Stats., which directs the Wisconsin Department of Transportation to adopt a rule designating the highways in Wisconsin on which STAA authorized vehicles may be operated consistent with federal regulations.

The Department of Transportation first adopted ch. Trans 276 of the Wisconsin Administrative Code in December of 1984. The rule is consistent with 23 CFR Part 658 in that the Wisconsin rule designates all of the highways in Wisconsin that are listed in 23 CFR Part 658 as part of the National Network for STAA authorized vehicles. The federal

regulation does not prohibit states from allowing operation of STAA authorized vehicles on additional state highways. The rule making authority granted to the Wisconsin Department of Transportation in § 348.07(4), Stats., allows the DOT to add routes in Wisconsin consistent with public safety. The rule making process also provides a mechanism to review requests from businesses and shipping firms for access to the designated highway system for points of origin and delivery beyond 5 miles from a designated route. A process to review and respond to requests for reasonable access is required by 23 CFR Part 658.

This rule amends Trans 276.07(25), Wisconsin Administrative Code, to add one segment of highway to the designated highway system established under s. 348.07(4), Stats. The actual highway segment¹ that this rule adds to the designated highway system is:

<u>Hwy.</u>	<u>From</u>	<u>To</u>
STH 180	STH 64 at Marinette	USH 141 in Marinette Co.

The long trucks to which this rule applies are those with 53-foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin's regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin's highways without a permit: A single vehicle with an overall length in excess of 40 feet², a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07 (2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

The effect of this rule will be to extend the provisions of s. 348.07 (2) (f), (fm), (gm) and (gr), and s. 348.08 (1) (e), Stats., to the highway segment listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly-designated highway. Specifically, this means there will be no overall length limitation for a tractor-semitrailer combination, a double bottom or an automobile haulway on the affected highway segment. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor-semitrailer combination or as part of a double bottom or an automobile haulway. Double bottoms will be allowed to operate on the affected highway segment provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on this highway segment provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

¹The rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

² 45-foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

2005 Wisconsin Act 363. 2005 Wis. Act 363 amends s. 348.07(4), Stats., effective August 1, 2006. That Act also requires the Department to promulgate emergency and

permanent rules governing long trucks. Its effect on this proposed rule change has not been determined.

Comparison with Rules in Adjacent States

None of the states adjacent to Wisconsin (Michigan, Minnesota, Illinois and Iowa) have administrative rules relating to long truck routes in their states.

Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen

Due to the federal requirement that requests for access to the designated highway system in a state be decided within 90 days of the request, a proposed rule making to add requested routes is initiated without investigation. The public hearing and Department investigation undertaken in preparation for the hearing provide the engineering and economic data needed to make a final decision on whether to withdraw the proposal or proceed to final rule making.

Small Business Analysis

The provisions of this rule adding a highway segment to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes. The Department's Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal Effect and Anticipated Costs Incurred by Private Sector

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

Contact Person and Place Where Comments are to be Submitted and Deadline for Submission

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Ashwani Sharma, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707-7986. You may also contact Mr. Sharma by phone at (608) 266-1273.

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

Notice of Hearing Transportation

NOTICE IS HEREBY GIVEN that pursuant to s. 84.01 (13), amended by 2005 Wis. Act 89, Stats., interpreting s. 84.01 (13), Stats., the Department of Transportation will hold a public hearing on the **8th day of August, 2006**, at the Hill Farms State Transportation Building, Room 951, 4802 Sheboygan Avenue, Madison, WI, at **10:00 AM**, to consider the emergency rule creation of ch. Trans 515, Wisconsin Adm. Code, relating to contractual service procurement.

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

Copies of Emergency Rule

Requests for copies of the emergency rule should be submitted to Randy Knoche, Department of Transportation, Bureau of State Highway Programs, Room 951, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Mr. Knoche by phone at (608) 266-1824.

To view the emergency rule or the proposed permanent rule, or submit written comments on the permanent rule via e-mail/internet, you may visit the following website:

<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Analysis Prepared by the Department of Transportation

Statutes interpreted: ss. 16.70 (3g) and 84.01 (13), Stats.

Statutory authority: ss. 16.70 (3g) and 84.01 (13), Stats.

Explanation of agency authority: The Department of Transportation is authorized to execute contracts for engineering and other services under s. 84.01(13), Stats. That statute also requires the Department to conduct a cost-benefit comparison of having that work performed by state employees, if the contract will cost \$25,000 or more. In addition to promulgating permanent rules, Act 89 requires the Department to promulgate emergency rules on this subject not later than July 1, 2006, and requires the Department to conduct this comparison for all contractual services solicited on or after July 1, 2006.

Related statute or rule: ss. 16.70 (3g), 84.01(13) and 84.06 (1m), Stats.

Plain language analysis: The proposed rule requires a cost benefit analysis before procuring engineering or other specialized services under s. 84.01(13), Stats., in excess of \$25,000 when those services are normally performed by state employees. The required analysis includes a comparison between the costs of contracting out and performing the services with state employees. The analysis also considers other subjective factors such as timeliness, quality and technical expertise.

Factual data and analytical methodologies: 2005 Wisconsin Act 89 requires the Department to promulgate this rule.

Comparison with Rules in Adjacent States:

Michigan: Department legal counsel is unaware of and was unable to locate any rules in this state pertaining to this subject.

Minnesota: Department legal counsel is unaware of and was unable to locate any rules in this state pertaining to this subject.

Illinois: Department legal counsel is unaware of and was unable to locate any rules in this state pertaining to this subject.

Iowa: Iowa Code sec. 23A.2 (2205) prohibits the state from offering to the public any supply or service that is also offered by private enterprise. This prohibition does not apply to supplies or services to be used or consumed solely by the state. There appears to be no requirement that the state compare costs and benefits of obtaining services by state employees or private enterprise.

Small Business Analysis

The proposed rule does not affect the amount or quality of engineering or specialized services procured from private enterprise and therefore is expected to have no effect on small businesses.

The requirements of the rule will be implemented by Department employees and will have no effect on external parties including small business. The Department's

Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal Effect

The Department estimates that compliance with 2005 Wisconsin Act 89 will cost it \$217,000 per year. No similar costs will be borne by the private sector.

Notice of Hearing Workforce Development (Unemployment Insurance) [CR 06-072]

NOTICE IS HEREBY GIVEN that pursuant to Sections 108.04 (2), 108.14 (2) and 227.11, Stats. the Department of Workforce Development proposes to hold a public hearing to consider rules affecting Ch. DWD 127, relating to the unemployment insurance work search.

Hearing Information

July 25, 2006
(Tuesday)
1:30 p.m.

MADISON
G.E.F. 1 Building
Room H306
201 E. Washington Ave.

Interested persons are invited to appear at the hearings and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 108.04 (2), 108.14 (2) and 227.11, Stats.

Statutes interpreted: Sections 108.04 (2), Stats.

Explanation of agency authority. Section 108.04 (2) (a) 3., Stats., provides that a claimant is eligible for unemployment benefits as to any given week for which he or she earns no wages if, among other things, the individual conducts a reasonable search for suitable work during that week. The search for suitable work must include 2 actions that constitute a reasonable search as prescribed by rule of the department. Section 108.04 (2) (b), Stats., provides that the requirements for registration for work and search for work shall be prescribed by rule of the department, and the department may by general rule waive these requirements under certain stated conditions. Section 108.14 (2), Stats., provides that the department may adopt and enforce all rules which it finds necessary or suitable to carry out Chapter 108, Stats., regarding unemployment insurance.

Summary of proposed rule. Section 108.04 (2), Stats., provides that an unemployment insurance claimant must conduct a reasonable search for suitable work. The department may waive this requirement under certain stated conditions. Chapter DWD 127 currently provides that the department *shall* waive the work search requirement for a

given week if certain specified circumstances apply to a unemployment insurance claimant and *may* waive the work search requirement for a given week when others apply. The proposed rule will make all waivers of the work search requirement mandatory if any of the specified circumstances apply.

The proposed rule will also modify two of the waiver criteria. Currently, the department may waive a claimant's work search requirement if the claimant has a reasonable expectation of starting work with a new employer within 4 weeks after the week in which he or she initiates a claim or in which an eligibility review is conducted. Under the proposed rule, the department will waive the work search requirement if the claimant has an offer of work that begins within 4 weeks regardless of when this occurs. In addition, currently the department waives a claimant's work search requirement if the claimant's most recent employer failed to post or maintain any notice as to claiming unemployment benefits. Under the proposed rule, this provision will be modified to clarify that this waiver criteria does not apply if the claimant was aware of the work search requirement.

The proposed rule will also make various technical corrections. Section 108.04 (1) (e), Stats., as affected by 2005 Wisconsin Act 86, repeals the provision that self-employed individuals shall not be eligible for benefits for any week in which the individual worked at self-employment, unless the individual establishes that he or she has made an active and bona fide search for employment. Self-employed claimants are now subject to the same work search requirements and waivers as non-self-employed claimants. The proposed rule will repeal s. DWD 127.09 relating to the definition of self-employment.

Section 108.04 (2) (a) 3. (intro.), Stats., as affected by 2003 Wisconsin Act 197, provides that the work search requirement does not apply to an individual if the department determines that the individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. The proposed rules will repeal an obsolete provision at s. DWD 127.02 (2) that limited the work search waiver based on a reasonable expectation of reemployment to 12 weeks after the claimant initiated the claim or 6 weeks after an eligibility review is conducted. The proposed rule will also repeal an obsolete provision at s. DWD 127.035 that limited the work search waiver to 18 months under certain conditions when the layoff was due to a disaster or the temporary closing of the employer's worksite for refurbishing or relocation of the worksite and the department believed that a customary work search would impose a hardship on employers in the labor market and would not be likely to result in suitable employment for a substantial number of the affected employees.

In addition, the proposed rule will update certain rule provisions to reflect changes in 1999 Wisconsin Act 15. Section 108.04 (2) (a) 3., Stats., as affected by 1999 Wisconsin Act 15, provides that the requirement that the individual conduct a reasonable search for work during the week must include 2 actions that constitute a reasonable search. The current s. DWD 127.01 does not specify 2 actions. The proposed rule will also repeal an obsolete statutory reference to s. 108.04 (7) (i), Stats., in s. DWD 127.01 (2) (b). This rule provision allows a claimant to refuse to apply for work with an employer if the claimant previously terminated employment with the same employer with good cause attributable to the employer under s. 108.04 (7) (b), Stats., or because the employer made employment, compensation, promotion or job assignments contingent upon the employee's consent to sexual contact or sexual intercourse

under s. 108.04 (7) (i), Stats. 1999 Wisconsin Act 15 repealed s. 108.04 (7) (i), Stats., and amended s. 108.04 (7) (b) to include sexual harassment.

The proposed amendment to s. DWD 127.04 (1) clarifies that the department may notify a claimant that evidence of his or her work search will be required for a future week, as well as past weeks. Sections DWD 127.05 (2) and (3) on the requirement to report work search efforts are repealed because they duplicate requirements found in other sections of Chapter DWD 127.

Summary of factual data and analytical methodologies. The criteria for a mandatory waiver of the work search requirement in s. DWD 127.03 and the permissive waiver criteria in s. DWD 127.02 are combined into one section of mandatory criteria to better reflect current department informal practice to always grant a waiver when any of the specified conditions are met.

The requirement to grant a waiver of the work search requirement when the claimant's last employer failed to post the required notice on claiming insurance is amended to clarify that the claimant must have been unaware of the work search requirement. This amendment is in response to a decision by the Labor and Industry Review Commission that found that the current language requires a waiver even after the department notifies a claimant of the work search requirement.

Other changes are primarily statutory updates and clarifications of rule language.

Comparison with federal law

There is a federal requirement that UI claimants search for work, but there is no federal law on the specific issues addressed in the proposed rule.

Comparison with rules in adjacent states

Iowa. The work search requirement shall be waived if a claimant is temporarily unemployed from the claimant's regular job in which the claimant worked full-time and will again work full-time, for a period not to exceed 4 weeks due to a plant shut-down, vacation, inventory, lack of work, or emergency.

Michigan. The work search requirement shall be waived if the layoff is temporary and work is expected to be available within 45 calendar days following the last day the individual worked and the employer notifies the agency in writing or by electronic data exchange that the layoff is temporary before the claimant is certified for his or her first compensable week following the layoff. The work search requirement may be waived if the return-to-work date is not later than 15 days following the layoff and the work search requirement is not waived under the previous provision. The work search requirement may also be waived if the state unemployment rate equals or exceeds 8.5%.

Illinois. The Illinois work search rules provide that a claimant must register in person at the Employment Service Office unless otherwise instructed by the local office for one of 10 listed reasons. Many of the reasons are similar to Wisconsin's work search waiver.

Minnesota. The department was unable to locate any Minnesota statutes or rules on the work search waiver.

Effect on small business

The proposed rules do not add or change any requirements for small businesses. There are no reporting, bookkeeping, or other procedures required for compliance with the proposed rule and no professional skills are required. The DWD Small Business Regulatory Coordinator is Jennifer Jirschele, (608) 266-1023, jennifer.jirschele@dwd.state.wi.us.

Fiscal impact

The proposed rules have no fiscal effect on state or local governments.

Agency contact person

Carla Breber, UI Disputed Benefit Claims, (608) 266-7564, carla.breber@dwd.state.wi.us.

Copy of the rules and submission of written comment

You may review and print a copy of the proposed rules at the department's proposed rule hearing website at <http://www.dwd.state.wi.us/dwd/hearings.htm>. You may receive a paper copy of the rule by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403
fax: (608) 266-1784
elaine.pridgen@dwd.state.wi.us

Written comments on the proposed rules received at the above address, email, or fax no later than **July 26, 2006**, will be given the same consideration as testimony presented at the hearing.

**Notice of Hearing
Workforce Development
(Unemployment Insurance)**

[CR 06-073]

NOTICE IS HEREBY GIVEN that pursuant to Sections 108.06 (2) (bm), 108.06 (2) (d), 108.08 (1), 108.14 (2), and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules affecting Ch. DWD 129, relating to unemployment insurance benefit claiming procedures.

Hearing Information

July 25, 2006 (Tuesday) 1:30 p.m.	MADISON G.E.F. 1 Building Room H306 201 E. Washington Avenue
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Interested persons are invited to appear at the hearings and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 108.06 (2) (bm) and (d), 108.08 (1), 108.14 (2) and 227.11, Stats..

Statutes interpreted: Sections 108.06 (2) and 108.08 (1), Stats.

Explanation of agency authority. Section 108.08 (1), Stats., provides that to receive unemployment insurance benefits for any given week of employment, a claimant shall give notice to the department with respect to such week of unemployment within such time and in such manner as the department may by rule prescribe.

Section 108.06 (2) (bm), Stats., provides that an employee's benefit year begins on the Sunday of the week in which the employee files a valid request to establish a benefit year with the department, except that the department may permit an employee to begin a benefit year prior to that time under circumstances prescribed by rule of the department.

Section 108.06 (2) (d), Stats., provides that a claimant may request that the department set aside a benefit year by filing a written, verbal or electronic request in the manner that the department prescribes by rule. If the statutory criteria for set aside are not met, the department shall not set aside the benefit year unless the department defines by rule exceptional circumstances in which a claimant may be permitted to set aside a request to establish a benefit year and the claimant qualifies to make such a request under the circumstances described in the rule.

Section 108.14 (2), Stats., provides that the department may adopt and enforce all rules which it finds necessary or suitable to carry out Chapter 108, Stats., regarding unemployment insurance.

Summary of proposed rule

Initiating a claim. Section 108.08 (1), Stats., provides that to receive unemployment insurance benefits for any given week of unemployment, a claimant shall give notice to the department with respect to such week of unemployment within such time and such manner as the department may by rule prescribe. Section DWD 129.01 (1) currently provides that a claimant is eligible only if, as of the first week being claimed, the claimant notifies the department in person, by telephone, or as otherwise prescribed by the department during that week or within 7 days after the close of that week, of the claimant's intent to initiate the claim. The proposed rules repeal the phrase "as of the first week being claimed." This clarifies that all claims can be backdated one week. The current language does not clearly state when a claim can be automatically backdated, which has resulted in the provision being applied inconsistently. The proposed rules also remove in-person as a specified option for filing an initial claim. It would still be an option under the "as otherwise prescribed" phrase. The proposed rules also add the option of filing via the Internet. Internet filing has been allowed since 2003 under the "as otherwise prescribed" language.

Continuing a claim. Section DWD 129.01 (2) describes the requirements for continuing a claim by filing a weekly certification. The current rule provides that the claimant is eligible for benefits for any week only if the claimant files a weekly certification in the manner prescribed by the department within 14 days following the end of the week for which benefits are claimed. The 14-day deadline is extended to 19 days for claimants who claim through the interstate system.

The proposed rules are rewritten for clarity, specify the option of filing a weekly certification via the Internet, and repeal the extended 19-day deadline for interstate claims. Since the vast majority of claims are filed by telephone or Internet, extra time for interstate claims is not needed. In addition, the proposed rules repeal the requirement that the claimant contact the department to receive directions on how to proceed if neither a check nor a reason for not receiving a check is received within 7 days after submitting weekly claim. This language has no bearing on the payment of benefits.

Resuming a claim. If a weekly certification is not filed for a benefit week as described in s. DWD 129.01 (2) on continuing a claim, the claim becomes inactive as of the first week after the last week in which a timely weekly certification could have been filed. The subsection on resuming a claim, s. DWD 129.01 (3), currently provides that a claim may be resumed by filing the notice required for initiating a claim under s. DWD 129.01 (1), except the deadline for resuming a claim is within 14 days after the close of the week falling between the week for which the untimely weekly certification was submitted and the week in which the claimant notifies the department. The proposed rules on resuming a claim are rewritten for clarity and repeal the provision that allows payment for the 14 days prior to a resumed claim so that all initial claim applications, including resuming a claim, have the same time limit, which is “within 7 days after the close of the first week being claimed.”

Waiver for exceptional circumstances. Section DWD 129.01 (4) lists criteria under which the department will waive the requirements for initiating a claim, continuing a claim, resuming a claim, or backdating a benefit year. The proposed rule adds the general criteria, “other exceptional circumstances over which the claimant has no control.”

Set aside a benefit year. Section 108.06 (2) (d), Stats., provides that a claimant may request that the department set aside a benefit year by filing a written, verbal, or electronic request in the manner that the department prescribes by rule. The department shall grant the request and cancel the benefit year if the request is voluntary, benefits have not been paid to the claimant and at the time the department acts upon the request for that benefit year the claimant’s benefit eligibility is not suspended. If the claimant does not meet these requirements, the department shall not set aside the benefit year unless the department defines by rule exceptional circumstances in which a claimant may be permitted to set aside a benefit year and the claimant qualifies to make such a request under the circumstances described in the rule.

The current s. DWD 129.04 provides that the request to set aside a benefit year must be in writing and that the department has recovered, or has waived the recovery of, all benefits paid to the claimant for that benefit year or offsets this amount against benefits the claimant would otherwise be eligible to receive at the time the request to set aside a benefit year is made. If the statutory criteria for set aside are not met, the department may set aside the benefit year under other conditions. Other conditions include the following:

- The department terminates coverage of an employer previously subject to ch. 108, Stats., for whom the claimant performed services in the base period and the claimant could not have foreseen this termination of coverage.
- The department makes an error relating to the claimant’s establishing of a benefit year;
- The wage data used by the department to establish the benefit year is erroneous.
- The claimant elects alternative filing because the claimant’s benefit year was established in the last month of a calendar quarter and benefits were paid to the claimant prior to the department advising the claimant of the choice of alternative filing.

The proposed rules repeal the requirement that a request to set aside a benefit year be in writing and create new exceptional circumstances when set aside of a benefit year may be allowed. The new exceptional circumstances are as follows:

- The claimant’s first payment in the benefit year was made after an additional initial claim was filed.

- The claimant is eligible to start a benefit year in another state.
- The cancellation of wage credits under s. 108.04 (5), Stats., reduces the claimant’s maximum benefit amount to less than 5 times the weekly benefit rate.
- Other exceptional circumstances exist over which the claimant has no control that are related to establishing a benefit year.

Summary of factual data and analytical methodologies

The proposed rules are modernized to specify the Internet as a method for filing initial claims and weekly certifications. The proposed rules also remove the specified in-person filing option since initial claims are no longer routinely filed at local offices. It would still be an option under the “as otherwise prescribed” phrase. New exceptional circumstances are added to allow the set aside of a benefit year based on the department’s experience with appropriate circumstances that have occurred with some frequency.

Comparison with federal law

There are no federal standards or regulations for unemployment insurance benefits regarding filing or notice requirements.

Comparison with rules in adjacent states

Minnesota. Applications for unemployment benefits are effective the Sunday of the calendar week in which the completed application is submitted. Applications and weekly certifications may be submitted by Internet, telephone, or mail. An account that has become inactive may be reactivated effective the Sunday of the calendar week in which the account was reactivated.

Iowa. An initial claim may be filed by telephone, in person, or by other means prescribed by the department. Claims are deemed filed as of Sunday of the week in which the claim is filed. A claimant must generally complete a voice response telephone claim to continue benefits. A request to set aside a benefit year must be in writing. Iowa lists numerous reasons to allow set aside of a benefit year. Reasons in common with Wisconsin include that a claimant could refile after the change of a calendar quarter to obtain an increase in the maximum benefit amount if the benefit year cancellation were allowed; if a claimant would receive more benefits from another state; or if a claimant received erroneous information from an employee of the department.

Michigan. The Michigan administrative rules provide that a claimant shall file an initial claim, continued claim, or resumed claim as directed by the agency. To be considered a timely filing and effective as of the beginning of the claimant’s first week of unemployment, a new claim shall be received by the agency not later than the Friday after the end of the week containing the claimant’s last day of work. A continued claim shall be received by the agency not later than the Friday after the end of the last week of the period for which the claimant is instructed to report. A resumed claim is effective as of the beginning of the week in which it is received by the agency. If a claimant does not file a new, continued, or resumed claim pursuant to these deadlines but files the new or resumed claim not later than the 14th day after these time limits, the claim is considered filed on time if the claimant has good cause for the lateness of the filing.

A claimant who has established a benefit year but has not received a benefit check may request a redetermination of benefit rights and cancellation of the established benefit year and may file a new claim to establish a new benefit year.

Illinois. An initial claim for benefits must be filed in person at the local office unless a claimant is otherwise instructed by the agency. An initial claim for benefits should be filed no

later than the end of the first week in which the claimant is separated from work and the claim shall begin in the week in which it was filed. Filing by mail may be allowed for claimants with special circumstances, such as lack of transportation or physical disabilities. Claimants generally file a certification for continuing benefits by telephone. Claimants are given a certification day in which they call and respond to questions concerning their claims for the prior 2 weeks. If the claimant misses the certification day, a call may be placed on Thursday or Friday of that week, or on the designated certification day or Thursday or Friday of the next week. Filing a certification by mail may be allowed in special circumstances, such as language issues, hearing impairment, or lack of access to a touch tone phone.

Effect on small business

The proposed rules do not add or change any requirements for small businesses. There are no reporting, bookkeeping, or other procedures required for compliance with the proposed rule and no professional skills are required. The DWD Small Business Regulatory Coordinator is Jennifer Jirschele, (608) 266-1023, jennifer.jirschele@dwd.state.wi.us.

Fiscal impact

The proposed rules have no fiscal effect on state or local

governments.

Agency contact person

Carla Breber, UI Disputed Benefit Claims, (608) 266-7564, carla.breber@dwd.state.wi.us.

Copy of the rules and submission of written comment

You may review and print a copy of the proposed rules at the department's proposed rule hearing website at <http://www.dwd.state.wi.us/dwd/hearings.htm>. You may receive a paper copy of the rule by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403
fax: (608) 266-1784
elaine.pridgen@dwd.state.wi.us

Written comments on the proposed rules received at the above address, email, or fax no later than **July 26, 2006**, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection

(CR 06–009)

Chs. ATCP 10 and 12, relating to animal disease and movement.

Commerce

(CR 06–031)

Ch. Comm 5, relating to licenses, certifications and registrations.

Commerce

(CR 06–040)

Ch. Comm 62, relating to automatic fire suppression systems for student housing serving colleges and universities.

Employee Trust Funds

(CR 05–114)

Ch. ETF 10, relating to separate retirement system investments in the fixed and variable retirement investment trusts.

Health and Family Services

(CR 06–021)

Ch. HFS 157, relating to protecting public health by regulating the sources and use of ionizing radiation and affecting small businesses.

Kickapoo Valley Reserve

(CR 06–029)

Ch. KB 1, relating to management of the Kickapoo Valley Reserve.

Natural Resources

(CR 06–012)

Chs. NR 10 and 19, relating to deer and turkey hunting, hunting and trapping techniques, permit and license issuance, dog training and learn-to-hunt programs.

Natural Resources

(CR 06–011)

Ch. NR 20, relating to fishing on the inland, outlying and boundary waters of Wisconsin.

Natural Resources

(CR 05–075)

Ch. NR 243, relating to animal feeding operations.

Natural Resources

(CR 05–116)

Chs. NR 439, 460, 462 and 484, relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional, boilers and process heaters.

Transportation

(CR 06–036)

Ch. Trans 510, relating to the Transportation Facilities Economic Assistance and Development (TEA) Program.

Rule orders filed with the revisor of statutes bureau

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

Commerce (CR 05-049)

An order affecting ch. Comm 3, relating to stop work, stop use and petition for variance procedures.
Effective 8-1-06.

Dentistry Examining Board (CR 04-095)

An order affecting ch. DE 11, relating to anesthesia administration.
Effective 1-1-07.

Health and Family Services (CR 06-018)

An order affecting ch. HFS 148, relating to the chronic disease drug repository program.
Effective 8-1-06.

Labor and Industry Review Commission (CR 05-092)

An order affecting chs. LIRC 1 to 4, relating to the rules of practice and procedure.
Effective 8-1-06.

Natural Resources (CR 05-101)

An order affecting ch. NR 20, relating to hook and line walleye, sauger and hybrids fishing in Sherman Lake, Vilas Co.
Effective 8-1-06.

Natural Resources (CR 05-089)

An order affecting chs. NR 102 and 207, relating to the water quality classifications in the Lake Superior basin and the related anti-degradation procedures for WPDES permits.
Effective 8-1-06.

Nursing Home Administrator Examining Board (CR 06-010)

An order affecting chs. NHA 1 to 3, relating to continuing education.
Effective 8-1-06.

Regulation and Licensing (CR 06-015)

An order affecting ch. RL 87, Appendix I, relating to the 2006 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).
Effective 8-1-06.

Rules published with this register and final regulatory flexibility analyses

*The following administrative rule orders have been adopted and published in the **June 30, 2006**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Employment Relations Commission (CR 02-037)

An order affecting chs. ERC 1 to 26, 28, 30 to 33, 40 and 50, relating to the administration of collective bargaining laws. Effective 7-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rules do not impact small businesses as defined in ch. 227.

Summary of Comments by Legislative Review Committees

No comments were received.

Health and Family Services (CR 03-085)

An order affecting ch. HFS 2, relating to recoupment of program benefit overpayments from program recipients. Effective 7-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rules concern the administration of state program benefits. The proposed rules do not directly affect small businesses, as defined under s. 227.114 (1), Stats. Accordingly, the Department is exempt from performing an analysis of the affect on small businesses by operation of ss. 227.114 (8) (b) and 227.19 (3m), Stats.

Summary of Comments by Legislative Review Committees

Modifications were requested by the Senate Committee on Health, Children, Families, Aging and Long-Term Care. The Department submitted modifications to the Senate Committee and to the Assembly Committee on Children and Families on April 26, 2006. No additional comments or requests for modifications were received.

Insurance (CR 06-002)

An order affecting ch. Ins 17, relating to fund fees fiscal year 2007. Effective 7-1-06.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

The legislative standing committees had no comments on this rule.

Natural Resources (CR 05-084)

An order affecting ch. NR 118, relating to management zone designations in the Lower St. Croix National Scenic Riverway. Effective 7-1-06.

Summary of Final Regulatory Flexibility Analysis

The change may have a positive impact on small business. Businesses may realize increased flexibility and a decrease in time needed for permit process review for changes to their structures. No process, design or operational standards are contained in the rule; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. There were no comments received.

Natural Resources (CR 05-086)

An order affecting ch. NR 10, relating to deer hunting season and permit issuance regulation changes. Effective 7-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rules relate to deer hunting and permit issuance. These rules are applicable to individual hunters and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rules. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The rule was referred to the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. A joint public hearing was held on January 23, 2006. As a result of that hearing, the department was requested to move the antlerless hunt to the first weekend in December north of Highway 8; add a two-year sunset of the antlerless hunt north of Highway 8; move the two-day youth hunt to the Saturday and Sunday closest to October 8; and to move the last day of bow hunting to the Sunday closest to January 3. At a January 31, 2006, meeting, the Natural Resources Board modified the rule to move the two-day youth hunt from its start date of 7 days following the start of the bow season to a start date of the Saturday closest to October 8 and to modify the four-day antlerless hunt north of Highway 8 to be held only in Herd Control Units starting the second Thursday after the Thanksgiving holiday. The Natural Resources Board

declined to move the antlerless hunt to the first weekend in December north of Highway 8, add a two-year sunset of the antlerless hunt north of Highway 8 or the move the last day of bow hunting to the Sunday closest to January 3.

On February 8, 2006, Senate Committee on Natural Resources and Transportation again asked for modifications to delete the provisions in the rule on the four-day December antlerless gun hunt and replace them with a four-day antlerless gun hunt north of Highway 8 beginning the first Thursday following the Thanksgiving holiday and a four-day antlerless gun hunt south of Highway 8 beginning the second Thursday following the Thanksgiving holiday. The Assembly Committee on Natural Resources requested the department to move the antlerless hunt to the first weekend in December north of Highway 8, add a two-year sunset of the antlerless hunt north of Highway 8 and to move the last day of bow hunting to the Sunday closest to January 3. On February 10, 2006, the Natural Resources Board declined to make any further modifications. The review committees objected to portions of Clearinghouse Rule No. 05-086 and the rule was referred to the Joint Committee for Review of Administrative Rules.

On Tuesday, April 18, 2006, the Joint Committee for Review of Administrative Rules held a public hearing. The Joint Committee requested the department to modify the rule to provide for a four-day firearm season beginning on the second Thursday following the Thanksgiving holiday in December 2006. At its April 2006 meeting, the Natural Resources Board adopted modifications to include all deer management units north of Highway 8 in the four-day December gun hunt. The four-day hunt was limited in 2006. On May 3, 2006, the Joint Committee for Review of Administrative Rules held an executive session and by a 9-1 vote approved the modifications adopted by the Natural Resources Board.

Natural Resources (CR 05-100)

An order affecting ch. NR 192, relating to lake monitoring contracts and the citizen lake monitoring network. Effective 7-1-06.

Summary of Final Regulatory Flexibility Analysis

Small businesses such as laboratories, data processing consultants and equipment vendors who may be eligible for contracts to assist in the network will benefit from the proposed rule. Participation is voluntary and the impacts positive. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. The Assembly Committee on Natural Resources held a public hearing on March 29, 2006. No comments or recommendations were received by the Department as a result of this hearing.

Natural Resources (CR 05-102)

An order affecting ch. NR 10, relating to small game and expanded spring turkey hunting in state parks. Effective 7-1-06.

Summary of Final Regulatory Flexibility Analysis

The revisions to chs. NR 10 and 45 pertain to small game and turkey hunting. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. The Assembly Committee on Natural Resources held a public hearing on March 29, 2006. No comments or recommendations were received by the Department as a result of this hearing.

Nursing (CR 05-121)

An order affecting chs. N 2 and 3, relating to qualifications for examination and application procedures, temporary permits and refresher courses. Effective 7-1-06.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Revenue (CR 04-031)

An order affecting ch. Tax 2, relating to the apportionment of apportionable income of interstate financial organizations. Effective 7-1-06.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Revenue (CR 05-117)

An order affecting ch. Tax 2, relating to the computation of the apportionment fraction by multi-state public utilities and telecommunications companies. Effective 7-1-06.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Revenue (CR 06-001)

An order affecting chs. Tax 1 and 2, relating to electronic funds transfer, information returns and wage statements. Effective 7-1-06.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **June 2006**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Employment Relations Commission

Chs. ERC 1 to 50

Health and Family Services

Ch. HFS 2

Ch. HFS 79

Insurance

Ch. Ins 17

S. Ins 17.01 (3)

S. Ins 17.28 (3) (c) and (6)

Natural Resources

Ch. NR 10

S. NR 10.001 (3t)

S. NR 10.01 (2) (a), (c), (e), (f) and (g), and (3) (a), (bt), (c), (e), (ed), (ef), (em), (es), (ev), (f) and (h)

S. NR 10.104 (7), (8), (10) and (11) (a)

S. NR 10.105 (2)

S. NR 10.27

S. NR 10.275 (1) (a) and (b), (2) (c) and (3) (a)

S. NR 10.28 (1) and (4)

S. NR 10.29

S. NR 10.40 (3) (f)

Ch. NR 19

S. NR 19.02 (4) (b)

Ch. NR 45

S. NR 45.09 (4) and (10)

Ch. NR 118

S. NR 118.04 (1) (b) and (3) (b)

Ch. NR 192

Nursing

Ch. N 2

S. N 2.03 (1) (c) and (2) (c)

S. N 2.04 (2) and (6)

S. N 2.06 (1) (b) and (4)

Ch. N 3

S. N 3.04 (1m)

Revenue

Ch. Tax 1

S. Tax 1.12 (3) (fm), (4) (a) and (7) (a)

Ch. Tax 2

S. Tax 2.04 (1) (a) and (b), (2) (d), (de), (dm) and (ds), (8)

SS. Tax 2.49 to 2.502

Editorial corrections

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

Natural Resources

Ch. NR 45

S. NR 45.06 (8)

Nursing

Ch. N 1

S. N 1.06 (3) (e)

Ch. N 6

S. N 6.01 (1)

Revenue

Ch. Tax 2

S. Tax 2.03 (1) (intro.)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 146. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Lance Corporal Eric Palmisano of the United States Marine Corps who lost his life during Operation Iraqi Freedom.

Executive Order 147. Relating to Wisconsin's leadership role in the development of stem cell technology and jobs.

Executive Order 148. Relating to Department of Natural Resources discretion of administering piers and wharves regulation in the State of Wisconsin.

Executive Order 150. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Staff Sergeant Nathan Vaco of the United States Army Reserve who lost his life during Operation Iraqi Freedom.

Executive Order 151. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Former United States Representative Gillespie V. "Sonny" Montgomery.

Executive Order 152. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Specialist Eric Clark of the United States Army Reserve who lost his life during Operation Iraqi Freedom.

Executive Order 153. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Specialist Grant Dampier of the United States Army who lost his life during Operation Iraqi Freedom.

Executive Order 154. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff on Memorial Day.

Executive Order 155. Relating to issuance of general obligation bonds for the Veterans Home Loan Program of appointment of hearing officer.

Executive Order 156. Relating to an additional extension of eligibility to received pay and benefits under Wis. Stats. s. 230.315.

Public notices

Health and Family Services (Medical Assistance Reimbursement of Hospitals)

The State of Wisconsin reimburses hospitals for medical services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and Chapter 49.43 to 49.47, Wisconsin Statutes. The Wisconsin Department of Health and Family Services administers this program that is called Medicaid or Medical Assistance (MA). Federal statutes and regulations require state plans, one for outpatient services and one for inpatient services, that provide the methods and standards for paying for hospital outpatient and inpatient services.

State plans are now in effect for the reimbursement of outpatient hospital services and inpatient hospital services. The Department is proposing to make changes to the provisions contained in the inpatient and outpatient plan effective July 1, 2006 to implement proposed provisions and maintain compliance with federal payment limits, and for administrative efficiencies.

Outpatient Hospital Services

Proposed changes in the state plan for reimbursement for outpatient services may include:

1. Excluding from the final cost settlement for critical access hospitals (CAH), the cost of physical, occupational and speech therapy services that are payable at the Wisconsin Medicaid Program's maximum fee schedule for such services in order to conform reimbursement with provisions of the 2005–2007 State Budget.

2. Allowing adjustments for critical access hospitals (CAH), to current interim payments based on more current information than is available in past audited cost reports in order to better estimate the final cost settlement for the respective CAH.

3. Reimbursing all OP lab services on a max fee schedule Effective January 1, 2007, to simplify final cost settlements.

Implementation of the above changes to the State Plan for outpatient services are expected to be budget neutral.

Inpatient Hospital Services

Proposed changes in the state plan for reimbursement for inpatient services may include:

1. Not requiring hospitals, including IMDs, to contact the external review organization for pre-admission review or obtain a case-specific control number prior to a substance abuse or mental health admission.

2. Modifying the criteria for a hospital to qualify for the general assistance disproportionate share supplement. Also, modification of the methodology for distributing the available funds to qualifying hospitals in order to maintain compliance with federal payment limits and to implement provisions of the 2005–2007 state budget act.

3. Removing the Critical Access Hospitals (CAHs) from the appendix for hospitals qualifying for exemption from capital cost reduction. This calculation does not affect the CAHs.

4. Allowing adjustments to current interim payments based on more current information than is available in past audited cost reports in order to better estimate the final cost settlement for the respective CAH.

5. Allowing, For the year July 1, 2006 to June 30, 2007 only, for not annually revising DRG weights based on more current claim and cost report information. Provide for retaining the DRG weights in effect in the prior year July 1, 2005 to June 30, 2006 to allow for timely payment of claims. Individual hospital rates will change and any new DRGs will have weights calculated.

Implementation of the above changes to the State Plan for inpatient services are expected to be budget neutral.

Copies of Proposed Changes and Proposed Payment Rates

Copies of the proposed changes will be sent to every county social services or human service department main office where they will be available for public review. For more information, interested persons may fax or write to:

Hospitals, Physicians and Clinics Section

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701–0309

Fax: (608) 266–1096

Written Comments

Written comments on the proposed changes are welcome and should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. at:

Division of Health Care Financing
Room 350, State Office Building
One West Wilson Street
Madison, WI

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