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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 & Consumer Protection (2)

1. Rules adopted amending **s. ATCP 10.47 (2) (c) and (3) (b) 3.**, relating to minimum acreage requirements for farm-raised deer hunting preserves.

(1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP") administers state laws related to farm-raised deer. DATCP currently licenses deer farms and issues certificates for deer hunting preserves, pursuant to s. 95.55, Stats., and ch. ATCP 10, Wis. Adm. Code.

(2) Current law generally prohibits deer hunting preserves smaller than 80 acres. However, 2005 Wis. Act 359 (enacted effective May 3, 2006) provides a limited "grandfather" exemption for certain white-tailed deer hunting preserves previously licensed by the Department of Natural Resources ("DNR"). Under Act 359, a white-tailed deer hunting preserve is exempt from the 80-acre minimum size requirement if, *among other things*, the acreage of the hunting preserve is "not less than the acreage subject to the deer farm license on December 31, 2002." This rule clarifies that the "acreage subject to the deer farm license on December 31, 2002" means the *hunting* acreage subject to the deer farm license on December 31, 2002. Without this interpretation, Act 359 would have no practical effect and would be rendered a nullity.

(3) The "grandfather" exemption in Act 359 is limited to hunting preserve operators who apply by November 1, 2006. DATCP must act on applications within 90 business days. Action may affect an operator's ability to operate during the

2006 hunting season. DATCP is adopting this rule as an emergency rule, in order to facilitate timely action on applications. DATCP could not adopt this rule by normal rulemaking procedures in time to implement Act 359.

Publication Date: October 9, 2006
Effective Date: October 9, 2006
Expiration Date: March 7, 2007
Hearing Date: November 13, 2006

2. Rules adopted creating **ch. ATCP 112**, relating to credit report security freezes.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP") will administer s. 100.54, Stats. as of January 1, 2007. DATCP is required under s. 100.54 (12), Stats. to adopt rules related to identification required of consumers requesting credit report security freezes.

(2) As of January 1, 2007, s. 100.54, Stats. will be in effect, however without an emergency rule the statute will be unclear regarding what constitutes proper identification for purposes of creating a security freeze, temporarily releasing a security freeze or permanently removing a security freeze from a consumer credit report.

(3) DATCP is adopting this emergency rule for the sole purpose of allowing consumers to clearly place a security freeze on their consumer credit report while the permanent rulemaking process is completed.

Publication Date: January 19, 2007
Effective Date: January 19, 2007
Expiration Date: June 18, 2007
Hearing Date: February 12, 2007

Commerce (2) (Financial Resources for Businesses and Communities, Chs. Comm 104-131)

1. Rules adopted creating **ch. Comm 104**, relating to Woman-Owned Business Certification Program.

Exemption From Finding of Emergency

The Legislature, by section 5 (1) (a) in 2005 Wisconsin Act 358, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Pursuant to section 227.24 of the statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper. In accordance with section 5 (1) (b) of 2005 Wisconsin Act 358, this rule will remain in effect until March 1, 2007, or the date on which permanent rules take effect, whichever is sooner.

Plain Language Analysis

These emergency rules primarily specify (1) which businesses are eligible for becoming certified in this program;

(2) how to apply for certification and recertification; (3) how the certifications will be issued, renewed, and rescinded; and (4) how to appeal a decision by the Department. Parameters are also included for recognizing equivalent certifications that are issued by other public agencies.

Publication Date: February 9, 2007
Effective Date: February 9, 2007
Expiration Date: See Section 5 (1) (b) 2005 Wis. Act 358
Hearing Date: March 30, 2007
 [See Notice this Register]

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

Exemption From Finding of Emergency

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

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

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

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

Dentistry Examining Board

Rules were adopted amending **ch. DE 11**, relating to better identifying the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation-enteral, conscious sedation-parenteral, deep sedation, and general anesthesia, and the requirements for each level.

Finding of Emergency

The board finds that failure to delay the effective date of CR04-095, from January 1, 2007, to July 1, 2007, will create

a danger to the public health, safety and welfare. The extra six months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients.

Publication Date: December 21, 2006
Effective Date: December 29, 2006
Expiration Date: May 28, 2007
Hearing Date: January 31, 2007

Financial Institutions – Banking

Rules were adopted revising **ch. DFI—Bkg 77**, relating to pawnbrokers.

Finding of Emergency

The effect of 2005 Wisconsin Act 158 is that pawnbrokers licensed by the department under s. 138.09, Stats., are exempt from s. 138.10, Stats., effective October 1, 2006. Under statutory procedures, however, a permanent rule regulating these pawnbrokers is unlikely to be effective until mid-2007, leaving the public without the safeguards of the permanent rule until that time. Thus the preservation of public safety and welfare necessitates enacting the safeguards of the emergency rule until a permanent rule is in effect.

Publication Date: September 25, 2006
Effective Date: October 1, 2006
Expiration Date: February 28, 2007
Hearing Date: December 13, 2006

Insurance (2)

1. Rules adopted creating **ss. Ins 9.25 (8) and 9.27 (4)**, Wis. Adm. Code, relating to preferred provider plan applicability dates and affecting small business plan limited exemption.

Finding of Emergency

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

The rule identifies a limited group of policies issued by licensed insurers offering preferred provider plans that do not comply with newly promulgated **ch. Ins 9**, Wis. Adm. Code. In compliance with the request of the Joint Committee for the Review of Administrative Rules (JCRAR), this rule must be issued as an emergency rule and permanent rule. It is not possible to complete the permanent rule process prior to the effective date of the chapter, January 1, 2007, therefore this emergency rule is necessary.

The commissioner has filed a notice of scope for drafting the permanent rule corresponding to this emergency rule and will continue with the permanent rule making process. It is intended that one rule hearing can be held to comply with both the emergency rule and permanent rule requirements.

Publication Date: August 31, 2006
Effective Date: September 1, 2006
Expiration Date: January 29, 2007
Hearing Date: December 12, 2006
Extension Through: March 29, 2007

2. Rules adopted revising s. **Ins 6.77**, relating to underinsured and uninsured motorist coverage in umbrella and commercial policies.

Finding of Emergency

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

These changes will modify the rule in light of the recent Supreme Court decisions, *Rebernick v American Family Mutual Ins Company*, 2006 WI 27 and *Rocker v USAA Casualty Ins Company*, 2006 WI 26. In *Rebernick*, the court held that s. 632.32 (4m), Stats, applies to personal umbrella policies. In *Rocker*, the court held that s. 632.32 (6) (a), Stats, applies to commercial general liability policies and commercial umbrella policies. These interpretations are inconsistent with current insurer practices and OCI's expectation of what would be covered in these types of policies.

Compliance with this interpretation would create significant, if not impossible compliance problems for insurers. Many insurers who write umbrella coverage do not write and are not even licensed to write automobile coverage. A second, difficult issue is that the limits for umbrella coverages are generally very high, \$1,000,000. It is unclear how an umbrella policy would reconcile these limits with the underlying auto policy and underinsured motorist coverage. For this reason, OCI had previously by rule exempted umbrella policies from the similar requirements of the uninsured motorist coverages in s. 632.32, Stats. For similar reasons, the same revision is being made for commercial liability policies.

Publication Date: September 29, 2006
Effective Date: September 29, 2006
Expiration Date: February 26, 2007
Hearing Date: December 11, 2006

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

1. Rules adopted amending s. **NR 1.21** and creating s. **NR 1.26**, relating to contracting for timber sale establishment services on state land.

Exemption from finding of emergency

As provided in section 13 of 2005 Wis. Act 166, "Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide a finding of emergency for a rule promulgated under this subsection."

Section 1 of the proposed rule distinguishes between timber sales related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services, including prequalification of bidders based on experience with timber sales and related forest inventory work. Section 2 makes technical corrections in the definition of educational requirements for cooperating foresters. The change would make educational requirements for cooperating foresters and department foresters identical, including the allowance of

training equivalent to that obtained at a college accredited by the Society of American Foresters.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

2. Rules adopted creating s. **NR 45.075**, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Exemption from finding of emergency

As provided in section 13 of 2005 Wis. Act 166, notwithstanding s. 227.24, Stats., the Department is not required to provide a finding of emergency for this rule and the emergency rule will remain in effect until a permanent rule is promulgated.

Rule FR-11-07(E) specifies those emergencies on forested land under the jurisdiction of the department over which the chief state forester shall have management authority. This rule describes causes of unforeseen damage or threat of damage to trees that could lead the chief state forester to declare an emergency and assume management authority. Included in the list of damaging agents that could lead to the declaration of an emergency are those required by the legislature: invasive species, pest infestation, disease, and damage to timber from fire, snow, hail, ice, or wind. The rule states that when declaring and responding to an emergency, the chief state forester shall consider the purpose of and management plan for the affected property in his or her decisions. This rule, however, would allow the chief state forester to take actions not described in the management plan for a property if that were the most appropriate response to the emergency. Finally, this rule describes the processes by which the declaration of the state of emergency shall be made effective, canceled or modified.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

Natural Resources (Environmental Protection – Hazardous Waste, Chs. NR 600—)

Rules adopted revising chs. **NR 660 to 665**, relating to hazardous waste management.

Exemption from Finding of emergency

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

In 2001, EPA proposed regulations to change the hazardous waste manifest requirements under the federal Resource Conservation and Recovery Act (RCRA) to eliminate all state-specific manifest requirements and to require electronic submittal of the manifests. The EPA's final rule was published March 4, 2005, with correcting amendments published on June 16, 2005, and the effective date is September 5, 2006. The new regulations require the use of standardized manifest forms in all states and require certification from EPA in order to print the manifest forms. (Final action on the e-manifest was postponed.) Unlike most

RCRA rules, this federal regulation will take effect, nation-wide, on the effective date. The new federal requirements will apply in all states, including Wisconsin, but will not override or supersede Wisconsin's state-specific hazardous waste manifest requirements. Accordingly, the potential exists for conflicting or additional state manifest requirements to exist beginning on that date, and the advantages of a single, uniform nationwide rule will be lost.

The normal administrative rulemaking process cannot be completed in time to conform Wisconsin's hazardous waste manifest requirements to the new EPA manifest regulations by their September 5, 2006 effective date. However, failure to adopt the new federal requirements as state rules by this date may cause legal uncertainty and potential confusion among hazardous waste generators, transporters and treatment, storage and disposal facility operators, as well as state regulatory program staff. This could interfere with interstate commerce and the orderly functioning of government, imposing unnecessary regulatory costs on Wisconsin individuals and businesses and out-of-state companies doing business in Wisconsin, to the detriment of the public welfare. More importantly, the potential confusion caused by different state and federal manifest requirements could lead to improper transportation and management of hazardous wastes, resulting in a threat to public health or safety and the environment.

Publication Date: September 2, 2006
Effective Date: September 5, 2006
Expiration Date: February 2, 2007
Hearing Date: September 26, 2006
Extension Through: April 2, 2007

Optometry Examining Board

A rule was adopted creating **ch. Opt 8**, relating to continuing education.

Exemption from finding of emergency

2005 Wisconsin Act 297 section 58 states in part:

“(3) Continuing education rules. (b) ...Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the optometry examining board is not required to provide evidence that promulgating a rule under this paragraph 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 paragraph.”

Plain language analysis

Chapter Opt 8 is being created to incorporate the continuing education requirements that optometrists must complete in order to renew their registrations. As a result of the changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, all optometrist will now be required to complete 30 hours of continuing education. Previously, only optometrists who were certified to use diagnostic pharmaceutical agents (DPA) and therapeutic pharmaceutical agents (TPA) were required to complete continuing education course work.

Publication Date: November 8, 2006
Effective Date: November 8, 2006
Expiration Date: April 7, 2007
Hearing Date: December 7, 2006

Regulation and Licensing

Rules adopted creating **chs. RL 160 to 168**, relating to substance abuse professionals.

Exemption from finding of emergency

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

Plain language analysis

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval and professional liability insurance for substance abuse professionals.

Publication Date: November 27, 2006
Effective Date: December 1, 2006
Expiration Date: April 30, 2007
Hearing Date: February 13, 2007

Transportation (2)

1. 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: See section 8 (2) of 2005 Wis. Act 89
Hearing Date: August 8, 2006

2. Rules adopted revising **ch. Trans 276**, relating to allowing the operation of certain 2-vehicle combinations on certain highways without a permit.

Exemption from finding of emergency

The Legislature, by Section 7 of 2005 Wis. Act 363, provides an exemption from a finding of emergency for the adoption of the rule.

Plain language analysis

Section 348.07 (1), Stats., historically has limited vehicle lengths on Wisconsin highways to 65 feet. Section 348.07(2), Stats., allowed vehicles meeting the specifications of that subsection to operate without permits despite exceeding the 65-foot limit of subsection (1).

2005 Wis. Act 363 amended s. 348.07, Stats., and essentially made 75 feet the default permitted length on the state trunk highway system. Wisconsin's old default 65-foot overall length limit still applies on all local roads but only applies to state trunk highways that are designated as 65-foot restricted routes by the Department. This emergency rule making establishes a preliminary list of such "65-foot restricted routes."

Prior to Act 363, s. 348.07 (4), Stats., permitted the Department to designate "long truck routes" upon which no overall length limits apply. The Department designates the state's long truck routes in s. Trans 276.07. This rule making does not affect those longstanding designations.

The new "default" 75-foot overall length limit applies on state highways that are neither designated as 65-foot restricted routes under this rule making nor long truck routes under s. Trans 276.07.

Definitions have been added to the rule to make it easier to identify the nature of designations made by the Department in Ch. Trans 276.

In drafting this rule the Department noticed several items that it believes may be of special interest to the legislature and which, in the Department's view, deserve special legislative attention. First, Act 363 did not grant any authority for 75-foot vehicles using the new 75-foot routes to leave those routes to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly facilities or points of loading or unloading. The Department does not believe this oversight was intentional and, on an emergency basis, has designated the intersection of each 75-foot route and any other highway as a long truck route under its authority in s. 348.07 (4), Stats. This will permit trucks to exceed the 65-foot default length limit on local roads to access such facilities and make deliveries. The Department encourages the legislature to consider statutorily establishing access rights for vehicles using 75-foot restricted routes.

The second consequence of Act 363 the Department has discovered in drafting this emergency rule is that one statute that formerly restricted double-bottom tractor-trailer combinations to the state's long-truck network was repealed by the deletion of the reference to s. 348.07 (2) (gm), Stats., by the Act's amendment of s. 348.07 (4), Stats. Under the amended statute, as revised by Act 363, it might appear to a reader that double bottom trucks of unlimited length may operate upon any highway in the state, including local roads and streets, without permits. Section 348.08 (1) (e), Stats., however, continues to provide that double-bottom trucks be restricted to highways designated by the department under s. 348.07 (4). WisDOT believes this provision continues to limit double-bottom operation to long truck routes designated by the Department under s. 348.07 (4), Stats. WisDOT would suggest the deleted reference to (2) (gm) in 348.07 (4), Stats., be re-inserted into the statute to avoid confusion.

Finally, the Department notes that s. 348.07, Stats., is becoming difficult to decipher from a legal standpoint because of the many amendments that have been made to it over the years. It may be that recodifying the statute for the purpose of clarification of the length limitations of Wisconsin law would be helpful to truck and long vehicle operators in this state.

Publication Date: September 15, 2006
Effective Date: September 15, 2006
Expiration Date: See section 7 (2) of 2005 Wis. Act 363
Hearing Date: October 4, 2006

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

Rules adopted revising s. DWD 56.06, relating to child care rates and affecting small businesses.

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:

The child care subsidy budget estimates that the child care subsidy program will have a tight budget by the end of fiscal year 06-07. This is due to flat federal funding, rising caseload, and increased provider costs. To begin to address the tight budget, the Department will not increase the child care subsidy maximum rates for 2007. This emergency rule will maintain the maximum rates at 2006 levels.

Publication Date: January 22, 2007
Effective Date: January 22, 2007
Expiration Date: June 21, 2007

Workforce Development (Public Works Compensation, Chs. DWD 290-294)

Rules adopted amending s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

Finding of Emergency

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

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

Publication Date: December 28, 2006
Effective Date: January 1, 2007
Expiration Date: May 31, 2007
Hearing Date: February 19, 2007

Scope statements

Commerce

Subject

Objective of the rule. The objective is to revise the Department's schedule of usual and customary costs. This revision is expected to include (1) adding tasks that have become commonly associated with PECFA claims, (2) establishing maximum reimbursement rates for those tasks, and (3) refining how the schedule addresses the tasks and corresponding rates that it currently includes.

Policy Analysis

The Department implemented chapter Comm 47 in 1993 as a means of controlling PECFA program costs and establishing necessary administrative and regulatory procedures. From its outset, this chapter has included monetary caps on site investigation activities, fostered price competition for site remediations, identified the services that consultants could provide, and delineated eligible and non-eligible costs.

The revisions to the usual and customary cost schedule will continue the technical and policy development of the PECFA program. The goals and objectives that formed the basis for the initial rule remain current, and the revisions to the schedule will concentrate on the same issues of remediation, cost control, and administrative process improvement. Clarifications may also be developed for making the schedule easier to understand and use.

Because section 101.143 (4) (cm) of the Statutes requires the department to use methods of data collection and analysis that enable the schedule to be revised to reflect changes in actual costs, the only feasible alternative to revising the schedule at this point in time would be a temporary delay in the revision. This delay would reduce the public benefits that will be achieved through revising the schedule now.

Statutory Authority

Section 101.143 (4) (cm) of the Statutes.

Staff Time Required

Approximately 100 hours will be needed to develop the revisions to the schedule. This time includes drafting the revisions and processing them through legislative review and adoption. The Department will assign existing staff to develop the revisions, and no other additional resources will be needed.

Entities Affected by the Rule

The revisions to the schedule may affect consultants and commodity service providers who perform the tasks that will be addressed by the revisions.

Comparison with Federal Regulations

The PECFA program was originally created in response to a requirement from the federal Environmental Protection Agency that all underground storage tank system owners have the financial means to clean up any contamination caused by a leak from those systems. However, the PECFA program no longer provides that financial protection for newly installed tank systems, and therefore there are no existing federal regulations which impact on how the PECFA program

operates. No proposed federal regulations are known that would likewise impact the PECFA program.

Natural Resources

Subject

Objective of the rule. Amendments are being proposed to Wisconsin Administrative Code ch. NR 140, Groundwater Quality to establish state groundwater quality standards for Alachlor ethane sulfonic acid (Alachlor–ESA). Chapter NR 140, Wis. Adm. Code, establishes Wisconsin state groundwater quality standards for both substances of public health concern and for substances of public welfare concern. Alachlor–ESA is considered a substance of public health concern.

Alachlor–ESA is a degradation product of the broadleaf herbicide Alachlor. Alachlor has been used in Wisconsin on corn and soybeans. Alachlor–ESA has been detected extensively in Wisconsin groundwater. Sampling conducted by the Department of Agriculture, Trade and Consumer Protection indicates that Alachlor–ESA is present in approximately 28% of the private water supply wells in Wisconsin.

Background

The last Department ch. NR 140 rulemaking effort originally included groundwater standards, developed by the Department of Health and Family Services (DHFS), for Alachlor–ESA. The Natural Resources Board approved, on three occasions, adoption of the Alachlor–ESA groundwater quality standards developed by DHFS, but those standards were objected to during Legislative rule review. The statutory time limit for completing rulemaking of those standards expired at the end of December, 2006. These proposed amendments to ch. NR 140 start the standard setting process over.

Policy Analysis

Chapter NR 140, Wis. Adm. Code, was adopted by the Natural Resources Board in 1985 to comply with Wisconsin Statute Chapter 160. Chapter 160, Stats., created as part of the 1983 Wisconsin Act 410 (The Groundwater Bill), requires the Department to develop groundwater quality standards for substances detected in, or having a reasonable probability of entering, the groundwater resources of the state.

Chapter NR 140, Wis. Adm. Code, establishes groundwater quality standards at two levels: preventive action limit (PAL) and enforcement standard (ES). In accordance with ch. 160, Stats., ES groundwater quality standards for substances of public health concern are established based on recommendations received from the Department of Health and Family Services. PAL groundwater quality standards for substances of public health concern are set at either 20% of the concentration of the established ES, or at 10% of the concentration of the established ES if the substance has carcinogenic, mutagenic or teratogenic properties or interactive effects.

Statutory Authority

The Department's statutory authority to establish state groundwater quality standards is contained in ch. 160, Stats., and ss. 281.12 (1), 281.15, 281.19 (1) and 299.11, Stats.

Chapter 160, Stats., establishes an administrative process for developing numerical state groundwater quality standards to be used as criteria for the protection of public health and welfare by all state groundwater regulatory programs. Chapter 160, Stats., directs the Department to use this administrative process to establish numeric groundwater quality standards for substances of public health or welfare concern, found in, or having a reasonable probability of being detected in, the groundwater resources of the state.

Staff Time Required

The estimated staff time needed to develop these amendments to NR 140 is approximately 235 hours.

Entities Affected by the Rule

The proposed groundwater standards would apply to all regulated facilities, practices and activities which may impact groundwater quality. The Department of Agriculture, Trade and Consumer Protection (DATCP) regulates pesticide use, handling and storage. DATCP may be affected by proposed Alachlor–ESA standards, as more monitoring for this substance may be warranted. Agricultural users of Alachlor might also potentially be affected by these rules as management practice or use restriction regulations could be adopted if Alachlor–ESA was found extensively in groundwater above proposed standards.

Comparison with Federal Regulations

The United States Environmental Protection Agency (US EPA) establishes health based drinking water maximum contaminant levels (MCLs) and health advisory levels (HALs). Federal MCLs, applicable at public water supply systems, are established based on scientific risk assessments and, in some cases, economic and technological considerations. Federal HALs are developed based on established health risk assessment reference doses (RfDs). No federal MCL, HAL or RfD has yet been established for Alachlor–ESA. Alachlor–ESA is currently on the US EPA Contaminant Candidate List (CCL). The CCL is the US EPA's list of unregulated contaminants which may require national drinking water regulation in the future.

Agency Contact

William Phelps, DNR Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707, William.Phelps@Wisconsin.gov; (608) 267–7619.

Podiatrists Affiliated Credentialing Board**Subject**

Continuing podiatric medical education. Objective of the rule. To amend the list of acceptable continuing medical educational program approval organizations to include the Wisconsin Society of Podiatric Medicine.

Policy Analysis

Currently, the Podiatrists Affiliated Credentialing Board must accept an educational program approved at the time of attendance by the council on podiatric medical education of the American podiatric medical association, the council on medical education of the American medical association, the council on medical education of the American osteopathic association, and the accreditation council for continuing

medical education. The rule amendment would add the Wisconsin Society of Podiatric Medicine as a program approval organization, providing podiatrists a local option when they seek continuing education program approval.

Comparison with Federal Regulations

There is no existing or proposed federal regulation for summary and comparison.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 448.695 (2), Stats.

Entities Affected by the Rule

Podiatrists licensed in Wisconsin, the Wisconsin Society of Podiatric Medicine, and providers of continuing podiatric medical education.

Staff Time Required

100 hours.

Public Instruction**Subject**

In TODD PALMER V. THE STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION, the Court instructed the department to promulgate a rule establishing guidelines for identifying gifted and talented pupils as required under s. 118.35 (2), Stats., because its current rule under s. PI 8.01 (2) (t), is not sufficient.

Therefore, the department will modify s. PI 8.01 (2) (t) to establish guidelines for the identification of gifted and talented pupils.

Policy Analysis

At this time it is not known what policies will be incorporated into the proposed rule.

Statutory Authority

Section 118.35 (2) and 227.11 (2) (a), Stats.

Staff Time Required

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

Entities Affected by the Rule

Local education agencies.

Comparison with Federal Regulations

N/A

Workforce Development**Subject**

DWD 56, Child Care Enrollment Underutilization.

Policy Analysis

The current methodology for authorizing payment to licensed providers has caused the child care subsidy program to pay for significant amounts of time when care is not actually being provided. The proposed rule will control costs by reducing payments to licensed child care providers for authorized child care services that are significantly underused. The rule will repeal the presumption of enrollment authorization for licensed providers and provide that a local child care administrative agency shall authorize on either an enrollment or attendance basis as follows:

The agency shall authorize the number of hours needed on an enrollment basis if the need for care is anticipated to be approximately the same number of hours each week.

The agency shall authorize payment based on the hours of actual attendance by each child if the need for care is anticipated to vary from week to week or if the child has a history of variable attendance.

The agency may authorize payment on the hours of actual attendance if the agency has documented 3 separate occasions where the provider significantly overreported the attendance of a child.

For any week in which a child whose authorized payments are on an enrollment basis attends less than 50% of the of the authorized hours of care, payment will be made on the basis of actual hours of attendance used, unless the agency determines that the absence is for a reason approved by the Department, such as short-term illness of the child or death in the family.

This rule will also increase the penalties for a provider who submits false or inaccurate attendance reports. The current s. DWD 56.04 (5) (c) allows for the child care administrative agency to refuse to issue new child care authorizations to a provider for a period of time not to exceed 6 months, revoke existing child care authorizations to the provider, or refuse to issue payment to the provider until the

violation is corrected. The proposed rule will provide additional penalties in the following situations:

If it is the provider's second documented instance of submitting an inaccurate attendance report or the inaccurate report resulted in or would have resulted in an overpayment of \$1000 or more, the agency may refuse to issue new child care authorizations to a provider for a period of time not to exceed 1 year.

If it is the provider's third or subsequent documented instance of submitting an inaccurate attendance report or the inaccurate report resulted in or would have resulted in an overpayment of \$5000 or more, the agency may refuse to issue new child care authorizations to a provider for a period of time not to exceed 5 years.

Statutory Authority

Sections 49.155 and 227.11 (2), Stats.

Entities Affected by the Rule

Families who receive assistance under the child care subsidy program and child care providers who care for children of these families.

Comparison with Federal Regulations

None.

Staff Time Required

60 hours.

Submittal of rules to legislative council clearinghouse

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

Public Service Commission

On February 16, 2007, the Public Service Commission of Wisconsin submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Section 227.14 (4m), Stats.

The proposed rule relates to the construction, installation and placing in operation of natural gas facilities.

Agency Procedure for Promulgation

The Commission will hold a public hearing on this rule on Monday, March 26, 2007 at 1:00 p.m. at the Public Service Commission Building at 610 North Whitney Way, Madison, Wisconsin.

The Gas and Energy Division of the Commission is the organizational unit responsible for the promulgation of the rule.

Contact Person

Jeffrey P. Murley
Docket Coordinator
608-267-1207
jeff.murley@psc.state.wi.us

Public Service Commission

On February 16, 2007, the Public Service Commission of Wisconsin submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Section 227.14 (4m), Stats.

The proposed rule affects ch. PSC 114, relating to Wisconsin State Electrical Code, Volume 1.

Agency Procedure for Promulgation

The Commission will hold a public hearing on this rule on April 13, 2007 at 10:00 a.m. at the Public Service

Commission Building at 610 North Whitney Way, Madison, Wisconsin.

The Gas and Energy Division of the Commission is the organizational unit responsible for the promulgation of the rule.

Contact Person

Leon M. Swerin
Assistant General Counsel
608-267-3589

Veterans Affairs

On March 1, 2007 the Wisconsin Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse repealing ss. VA 8.01 and 8.03 (1) of the Wisconsin Administrative Code. The proposed rule relates to the county veterans service officer grant program.

Analysis

The proposed order eliminates references to an obsolete pay schedule that had established a minimum pay level for CVSOs. Data establish that the current salaries of CVSOs significantly exceed the current minimum levels. In fact, 43 out of 72 counties exceed the maximum applicable pay levels.

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

Agency Procedure for Promulgation

A public hearing is required and will be held on April 20, 2007. The Office of the Secretary is primarily responsible for preparing the rule.

Contact Person

John Rosinski
Chief Legal Counsel
(608) 266-7916

Rule–making notices

Notice of Hearing

Commerce

(Financial Resources for Businesses and Communities)

NOTICE IS HEREBY GIVEN that pursuant to 2005 Wisconsin Act 358, section 5 (1) (a), the Department of Commerce will hold a public hearing on emergency rules in chapter Comm 104 relating to a woman–owned business certification program.

The public hearing will be held as follows:

Date and Time: Friday, **March 30, 2007** at 10:00 a.m.

Location: Thompson Commerce Ctr, Third Fl., Room 3B
201 West Washington Avenue, Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the emergency rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until April 10, 2007, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E–mail comments should be sent to srockweiler@commerce.state.wi.us. If e–mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 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 Wisconsin Department of Commerce

1. Statutes Interpreted: Sections 560.035 (1) and 227.51.
2. Statutory Authority: Section 560.035 (1) (c) and section 5 (1) (a) in 2005 Wisconsin Act 358.
3. Explanation of Agency Authority: Section 560.035 (1) (c) of the Statutes, as created by 2005 Wisconsin Act 358, requires the Department to promulgate permanent rules for implementing a woman–owned business certification program under section 560.035 (1) of the Statutes. Under section 5 (1) (a) of the Act, the Department is required to promulgate these emergency rules for the period before the effective date of the permanent rules.
4. Related Statute or Rule: Chapter Comm 105 contains the requirements for the Department’s Minority Business Certification Program. Although that program does not recognize women as minorities, many of the best practices which the Department has developed in that program are extrapolative to a program for certifying woman–owned businesses.

5. Plain Language Analysis: These emergency rules primarily specify (1) which businesses are eligible for becoming certified in this program; (2) how to apply for certification and recertification; (3) how the certifications will be issued, renewed, and rescinded; and (4) how to appeal a decision by the Department. Parameters are also included for recognizing equivalent certifications that are issued by other public agencies.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations: Title 49 of the *Code of Federal Regulations*, Part 26, Subpart D, addresses certification standards for disadvantaged business enterprises that participate in federal Department of Transportation (DOT) financial assistance programs. Those enterprises include businesses that are substantially owned by women having a personal net worth which does not exceed \$750,000. Subpart E addresses the certification procedures, which include determination and issuance of the credential by corresponding State–level or multi–State Unified Certification Programs. The certification criteria in Subparts D and E are similar to these rules in chapter Comm 104, in addressing the application process; documentation of majority ownership and control; acceptance of certifications by the U.S. Small Business Administration; issuance or denial of the credential; appeals; notification duty if application information changes materially; recertification; and ineligibility of not–for–profit organizations.

Title 13 of the *Code of Federal Regulations*, Part 124, Subpart B, addresses the U.S. Small Business Administration’s certification of small, disadvantaged businesses, for participation in federal procurements aimed at overcoming the effects of discrimination. Some woman–owned businesses in Wisconsin are expected to be eligible for this certification. The certification criteria in Subpart B are similar to these rules in Comm 104, in addressing the application process; documentation of ownership and control; issuance or denial of the credential; reconsideration; certification by other certifying entities, including the federal DOT; decertification; appeals; and recertification.

Wisconsin’s statutory parameters for certifying woman–owned businesses, and these rules in Comm 104, do not specify a maximum business size or maximum net worth, beyond which women owners are ineligible for certification. These rules in Comm 104 also differ from the federal criteria by not accepting certifications from private–sector entities.

7. Comparison With Rules in Adjacent States: An Internet–based search of State–level rules in Minnesota, Iowa, Illinois, and Michigan revealed the following information relating to certification of woman– or female–owned businesses.

Minnesota

Minnesota offers a targeted–group procurement program to help remedy the effects of past discrimination against members of targeted groups. To be considered under the program, a business must be designated as a targeted business by the Minnesota Commissioner of Administration. As directed by section 16C.19 of the Minnesota Statutes, the criteria for these designations are promulgated as rules and are included in Minnesota Rules, Chapter 1230. This chapter addresses certification of small, targeted–group businesses that are at least 51 percent owned and operationally controlled

on a day-to-day basis by either women or other socially disadvantaged persons. This chapter is also similar to these rules in Comm 104 in addressing the application process; documentation of majority ownership and control; issuance or denial of the credential; and use of a statutory, contested-case hearing process for appeals.

Iowa

Chapter 54 of the rules of the Iowa Department of Economic Development establishes a targeted, small business procurement program for promoting the growth, development, and diversification of Iowa businesses that are owned by minorities or women. Chapter 55 of the rules of that Department establishes a targeted, small business financial assistance program to assist women, minorities, persons with disabilities, and low-income individuals in establishing or expanding small business ventures in Iowa. Prior to participation in either of these two programs, a business must be certified as a targeted small business, in accordance with Chapter 25 of the rules of the Iowa Department of Inspections and Appeals. Under the definitions in that chapter, a targeted small business (1) is 51 percent or more owned, operated, and actively managed by minorities, women, or persons with disabilities; (2) has an annual gross income of less than \$3 million; and (3) is operated for profit. The certification rules in the chapter are similar to these rules in Comm 104, in addressing the application process; documentation of majority ownership and control; issuance or denial of the credential; consideration of certification by another agency; decertification; recertification; and use of a statutory, contested-case hearing process for appeals. The rules in Comm 104 differ by not limiting annual sales to \$3 million.

Illinois

Title 44, Part 10 of the Illinois Administrative Code implements the Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575]. This Act establishes a goal that at least 12 percent of contracts awarded by State agencies subject to the Act be awarded to businesses which are owned and controlled by minorities, females, or persons with disabilities. Of that 12 percent, 5 percent must be female-owned businesses; and these businesses cannot have annual gross sales of \$27 million or more, including sales from any affiliates. The Act also authorizes development and use of a procedure to certify firms eligible for the benefits of the Act; allows for certain special treatment in contracting with certified businesses; and establishes a Council, Secretary, and, in the Department of Central Management Services, a program function to implement and oversee the Act. Section 10.30 of Part 10, Title 44, addresses the roles of the State agencies and the Council in achieving compliance with the contract-awarding goals. Under section 10.50, only certified businesses are eligible for the benefits of the Business Enterprise program, and State agencies can count only those expenditures with a certified vendor, or subcontractor, toward meeting the contract-awarding goals. The certification rules in sections 10.50 to 10.72 are similar to these rules in Comm 104, in addressing the application process; documentation of majority ownership and control; issuance or denial of the credential; consideration of certification by another entity; reconsideration; decertification; appeals; and recertification. The rules in Comm 104 differ by not limiting annual sales to \$27 million, and by not accepting certifications from private-sector entities.

Several other rules in other portions of the Illinois Administrative Code require or encourage targeting of various opportunities to women-owned businesses, but do not link this targeting to certification.

Michigan

No information was found relating to certification of women- or female-owned businesses.

8. Summary of Factual Data and Analytical Methodologies: The data and methodology for developing these rules were derived from and consisted of incorporating the criteria in section 560.035 (1) of the Statutes; incorporating many of the best practices the Department has developed in its current, similar program for certifying minority-owned businesses; soliciting and utilizing input from representatives of the stakeholders who are expected to participate in this program; and reviewing Internet-based sources of related federal, state, and private-sector information.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report: The primary document that was used to determine the effect of these rules on small business was 2005 Wisconsin Act 358. This Act requires the Department to implement a program for certifying woman-owned businesses, and requires the Department to promulgate rules for administering the program. However, this Act does not require these businesses to become certified, and does not create preferences in governmental procurement for these businesses. Consequently, these rules do not require this certification, and do not create procurement preferences.

10. Effect on Small Business: These rules are not expected to impose a negative effect on small business, because the rules only address applying for, receiving, and maintaining voluntary credentials. These rules do have the potential to enable woman-owned businesses to benefit from additional business opportunities. In recognizing this positive impact, the Department took steps to reduce possible barriers for woman-owned small businesses, as defined in section 227.114 (1) of the Statutes, by requesting external participation in the draft rule development. The Department organized and solicited comments from organizations that represent the interests of woman-owned small businesses, and from those who represented supplier-diversification programs. The rule advisory group included the following members and organizations:

Kathy Doyle – Advocap

Renee Walz – Western Dairyland Community Action

Jennifer Ring Mellberg – WI Women's Business Initiative Corporation

Bill Smith – National Federation of Independent Businesses

Mary Stoltz – Madison Chapter of National Association of Women Business Owners

Beth Nemecek – AmeriPrint Graphics, Inc.

Laurie Benson – Inacom, Inc.

Lisa Kleiner – Wood, McNally, Maloney & Peterson, S.C.

Jerry Fulmer – WE Energies

Mary Trimmier – U.S. Small Business Administration

Mildred Hyde Demoze – Milwaukee County Office of Community Business Development Partners

The rule-advisory group had the opportunity to review the rule drafts and provide input through two meetings held at the Department, on July 27 and August 16, 2006.

Small businesses' access to information about the woman-owned business enterprise (WBE) certification program will determine the level of participation by the woman-owned businesses that meet the small business definition contained in section 227.114 (1) of the Statutes.

The Department plans to issue a statewide press release announcing the availability of the WBE certification, so that small businesses which are not members of associations or business-related organizations will be aware of the new WBE certification program. The Department also plans to promote the availability of the woman-owned business certification through the Department's network of entrepreneurial business-assistance partners, numerous business affiliations and industries, and Department-sponsored events that cater to small business. A user-friendly WBE fact sheet is expected to be available through a Department WBE certification Web site, and training sessions may be offered, to assist small businesses in understanding the requirements and the application process.

Copy of Rule

The emergency rules and an analysis of the rules are available on the Internet, by entering "Comm 104" in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Anne Thundercloud at the Department of Commerce, Bureau of Minority Business Development, P.O. Box 7970, Madison, WI 53707, or at AThundercloud@commerce.state.wi.us, or at telephone (608) 267-9550 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Fiscal Estimate

The appropriation, as created by 2005 Wisconsin Act 358, will result in revenues that will offset the Department's costs in administering this new program.

The Department estimates that 1200 businesses will maintain the credential under this program, at an annual fee of \$50.

The rules are not expected to impose any significant, mandated costs on the private sector, because the rules only address applying for, receiving, and maintaining voluntary credentials.

Contact Person

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or at cdunn@commerce.state.wi.us.

Notice of Hearing

Commerce

(Financial Resources for Businesses and Communities)

NOTICE IS HEREBY GIVEN that pursuant to 2005 Wisconsin Act 479, section 17 (1) (d), the Department of Commerce will hold a public hearing on emergency rules in chapter Comm 135 relating to tax credits and exemptions for Internet equipment used in the broadband market

The public hearing will be held as follows:

Date and Time: Monday, **March 26, 2007** at 2:00 p.m.

Location: Thompson Commerce Ctr. Third Floor, Rm. 3B
201 West Washington Avenue, Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the emergency rules. Persons making oral presentations are requested to submit their comments in writing, via e-mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until March 30, 2007, to permit

submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E-mail comments should be sent to srockweiler@commerce.state.wi.us. If e-mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266-0797 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 Wisconsin Department of Commerce

1. Statutes Interpreted: Section 17 (1) in 2005 Wisconsin Act 479

2. Statutory Authority: Section 17 (1) (d) in 2005 Wisconsin Act 479

3. Explanation of Agency Authority: Section 17 (1) (d) in 2005 Wisconsin Act 479 authorizes the Department to promulgate emergency rules for administering a program that will (1) certify businesses as temporarily eligible for tax credits and exemptions for Internet equipment used in the broadband market, and (2) allocate up to \$7,500,000 to these businesses for these tax credits and exemptions.

4. Related Statute or Rule: Sections 71.05 (6) (a) 15., 71.07 (5e), 71.08 (1) (intro.), 71.10 (4) (gy), 71.21 (4), 71.26 (2) (a), 71.28 (5e), 71.30 (3) (es), 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (5e), 71.49 (1) (es), 77.51 (6m) and (10), 77.54 (48), and 77.92 (4) of the Statutes.

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

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

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations: An Internet-based search of the *Code of Federal Regulations*, for financial incentives in expanding the broadband market, found cost-sharing requirements for broadband personal communication services, in 47 CFR 24-Subpart E, but did not reveal any tax credits or tax exemptions for Internet equipment.

An Internet-based search of the 2006 and 2007 issues of the *Federal Register* found rules of the Federal Election Commission relating to financing of Internet communications by political committees, but did not reveal

any proposed rules relating to tax credits or tax exemptions for Internet equipment.

7. **Comparison With Rules in Adjacent States:** An Internet-based search of rules in adjacent states only found rules in Iowa for Internet-based tax benefits. Under sections 18.20 (5) and 231.12 of chapters 18 and 231 of the rules of the Iowa Revenue Department, the sales price from charges paid to a provider for access to an on-line computer service is exempt from tax. An "on-line computer service" is one which provides for or enables multiple users to have computer access to the Internet. Also, the furnishing of any contracted on-line service is exempt from Iowa tax if the information is made available through a computer server. The exemption applies to all contracted on-line services, as long as they provide access to information through a computer server.

8. **Summary of Factual Data and Analytical Methodologies:** The data and methodology for developing these rules were derived from and consisted of incorporating the criteria in 2005 Wisconsin Act 479; incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax-credit verification; soliciting and utilizing input from other state agencies, and from representatives of the stakeholders who are expected to participate in this program; and reviewing Internet-based sources of related federal, state, and private-sector information.

The Department particularly noted that Section 17 (1) (b) in Act 479 allows allocating the tax credits and exemptions only for areas of Wisconsin that are either not served by a broadband Internet service provider or are served by not more than one of these providers. In consultation with the Wisconsin Public Service Commission, the Department learned that the entire state currently has access to satellite-based broadband Internet service from two or more providers of that service. Consequently, the Department interprets Section 17 (1) (b) as excluding satellite-based service from the tax benefits in the Act, and the adopted rules contain that exclusion. However, cell phone or wireless equipment is not excluded.

9. **Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report:** The Department reviewed maps of current, land-based Internet service areas, and solicited input from the corresponding service providers as to their potential for expanding this service to underserved areas of Wisconsin. Particular emphasis was placed on input relating to minimizing any difficulties for small businesses.

10. **Effect on Small Business:** The rules are not expected to impose any significant costs on small businesses, because the rules only address applying for and allocation of tax credits and exemptions for increasing the availability of broadband Internet service in underserved areas of the State.

Copy of Rule

The emergency rules and an analysis of the rules are available on the Internet, by entering "Comm 135" in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at: srockweiler@commerce.state.wi.us, or at telephone (608) 266-0797 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Fiscal Estimate

The rules will not impose any significant costs on the private sector, because the rules only address applying for and allocation of tax credits and exemptions for increasing the availability of broadband Internet service in underserved areas of the state.

Contact Person

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or at cdunn@commerce.state.wi.us.

Notice of Hearing Public Service Commission [CR 07-020]

The Public Service Commission of Wisconsin proposes an order to revise ch. PSC 133, relating to the construction, installation and placing in operation of natural gas facilities.

Hearing Date: Monday, **March 26, 2007** at 1:00 p.m.

Hearing Location: Public Service Commission, 610 North Whitney Way, Madison, WI

This docket uses the Electronic Regulatory Filing system (ERF)

Comments Due: Monday, April 2, 2007 – Noon

FAX Due: Friday, March 30, 2007 – Noon

Address Comments To:

Sandra J. Paske, Secretary to the Commission

Public Service Commission

P.O. Box 7854

Madison, WI 53707-7854

FAX (608) 266-3957

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory authority: Wis. Stats. ss. 196.02, 196.49 and 227.11.

Statute interpreted: Wis. Stats. s. 196.49

Objective of the rule.

A. This rulemaking will update Wis. Admin. Code ch. PSC 133. This chapter addresses the construction, installation and placing in operation of natural gas facilities and the authorization of natural gas service territories. The chapter sets out commission requirements for when a certificate of authority is required, the information that is to be included in a natural gas utility's application to the commission, and the procedures the commission follows in processing the application.

This chapter was last comprehensively reviewed and updated in 1959. It contains various thresholds that define when commission approval is required for gas utility projects. The proposal includes revisions of the defining thresholds based on agency experience with construction projects since 1959. For example, the chapter contains several provisions with monetary thresholds for requiring commission review and approval that are updated to reflect changes in industry procedures and economics. Wis. Admin. Code s. PSC 133.03 (1) (h), requires utilities to request a certificate of authority for gas line projects that cost \$600,000 or four percent of a utility's gross gas operating revenues, whichever is less. If this amount were adjusted for inflation since the last time this

specific rule was updated, this amount would now range from approximately \$1,000,000 to \$1,500,000. This range looks at the construction costs for transmission mains, steel and plastic distribution mains and measurement/regulation station equipment for city gate stations. The electric utility construction rules have adopted a mechanism that automatically adjusts to reflect inflation and other factors. In the attached proposed rules, the Commission has chosen to retain a set amount for the gas construction rules of \$1,500,000, the upper range of the inflation adjusted costs.

A provision is added stating that prior commission authorization is not necessary when the relocation of existing pipelines and associated plant is needed to accommodate highway or airport construction.

Additionally, the proposal contains new rules for the filing, review and approval of territorial agreements and changes in utility boundaries because of annexations. These give the utilities clear directions regarding commission filing requirements and processes to be followed in these situations. For example, the proposed rules include definitions of annexation and territorial agreements, and establish what information must be provided to the commission regarding changes in service territory that result from territorial agreements and annexations.

Finally, changes were made in light of statutory changes that were adopted under 2003 Wisconsin Act 89. Rule language has been included that reflects the pre-application consultation that is required of construction applicants with the PSC and Department of Natural Resources. The filing requirements in the proposed rules have also been amended to reflect information that may be necessary to carry out the requirements of 2003 Wisconsin Act 89.

Statutory Authority to Promulgate the Proposed Rule

Wis. Stats. s. 196.49 authorizes the commission to issue rules about commission certification that public convenience and necessity require a gas project. Further, it states that utilities may not begin construction, installation or operation of any new plant, equipment, etc., unless it has complied with commission rules.

Comparison with Existing or Proposed Federal Regulations

The commission is not aware of any existing or proposed federal regulations in this area.

Comparison with Similar Rules in Adjacent States

Existing rule language requires authorization before building plant in certain limited circumstances, such as where the utility is not authorized to serve, where a facility is designed to materially change output, facilities for new types of gas, and, in certain situations, very large projects. The proposed rule clarifies when authorization must be obtained before constructing an intrastate pipeline to deliver to other gas suppliers, and includes an exclusion from the authorization requirement for construction needed due to highway or airport construction.

In Iowa, pipeline companies are required to get authorization to construct, maintain and operate a pipeline if that pipeline goes over or across public or private highways, grounds, waters and streams of any kind, if the pipeline operates at pressures over 150 pounds per square inch or is a transmission line. Illinois requires authorization before construction of any facilities that are not substitutions for existing facilities. Michigan requires construction authorization if a new Certificate of Public Convenience and Necessity is needed, but not otherwise. Minnesota requires

authorization for large liquefied or underground gas storage facilities and for pipelines transporting at pressures higher than 200 psi with more than 50 miles of their length in Minnesota. Minnesota requires plans to be filed for gas transmission lines operating at more than 125 psi, not including gas distribution or gas gathering lines and associated facilities.

The proposed rule includes requirements for commission approval of territorial agreements between utilities. Such agreements may be the result of situations such as those involving two utilities serving the same municipality and controversy over the area to be served by two or more utilities. Authorization is also required in certain annexation situations.

Illinois, Michigan and Minnesota each have similar rules requiring commission approval of territorial agreements and/or service provision in cases involving annexation or multiple utilities providing service to a municipality.

The rule contains many of the same requirements for what must be included in a construction application that adjacent states do, for example: maps showing routes, operating pressures, cost and financing information, alternatives, identification of utilities and municipalities affected, environmental information and conservation efforts. The proposed rule adds a requirement for identification of landowners from whom property or easements must be obtained and a statement as to which of these landowners have been notified of the project.

A copy of this entire notice and text of proposed rule may be accessed from the electronic regulatory filing portion of the Commission's Website (psc.wi.gov).

Initial Regulatory Flexibility Analysis

This rulemaking will affect three small gas utilities. Each of these has revenues in excess of \$5 million but has 25 or fewer employees. The impact on these businesses will be minimal as this rulemaking clarifies and codifies existing practice. It also decreases the number of circumstances when certain reports must be filed.

Fiscal Estimate

No fiscal effect is anticipated. Further, no substantial fiscal effect on the private sector is anticipated.

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 Monday, **March 26, 2007**, at 1:00 p.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 Monday, April 2, 2007, at noon (March, April 30, 2007, at noon, if filed by fax). All written comments must include a reference on the filing to docket 1-AC-209. 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 at beginning of this Notice.

If filing by fax: Send fax comments to (608) 266-3957. Fax filing cover sheet MUST state "Official Filing," the docket number I-AC-209, and the number of pages (limited to 25 pages for fax comments).

Contact Person

Media questions should be directed to Linda Barth, Director of Governmental and Public Affairs at (608) 266-9600. Small business questions should be directed to Anne Vandervort at (608) 266-5814 or anne.vandervort@psc.state.wi.us. Other questions regarding this matter should be directed to docket coordinator Jeffrey P. Murley at (608) 267-1207 or jeff.murley@psc.state.wi.us. 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 the docket coordinator, as indicated in the previous paragraph, as soon as possible.

Notice of Hearing Public Service Commission [CR 07-021]

The Commission proposes to repeal and recreation ch. PSC 114, Wis. Adm. Code, relating to rules concerning electric safety—Revision of Volume 1 of the Wisconsin State Electrical Code.

NOTICE IS GIVEN that a hearing will be held beginning on Friday, **April 13, 2007**, at 10:00 a.m. in the Amnicon Falls Room (1300) at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, and continuing at times to be set by the presiding Administrative Law Judge. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations should contact the docket coordinator listed below.

Hearing Date: Friday, **April 13, 2007** at 10:00 a.m.

Hearing Location: Amnicon Falls Hearing Room (1300), Public Service Commission, 610 North Whitney Way, Madison, WI

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.74 and 227.11 (2)

Statute interpreted: s. 196.74

By letter dated August 17, 2006, the Commission appointed an advisory committee pursuant to s. 227.13, Stats., to review and submit recommendations for updating Volume 1 of the Wisconsin State Electrical Code. This part of the Code is administered by the Commission.

Volume 1 has been and is based on the National Electrical Safety Code (NESC), which is also known as American National Standards Institute (ANSI) C2. In 1979, 1982, 1985, 1988, 1991, 1994, 1997 and 2003, the Commission adopted the 1977, 1981, 1984, 1987, 1990, 1993, 1997 and 2002 editions of the NESC, respectively, with certain changes, deletions and additions.

The 2007 edition of the NESC was recently issued, and a corresponding revision of Volume 1 is now desired to reflect the latest national code, correct existing deficiencies, and make other changes, as necessary, to update and improve the state code. The rules in ch. PSC 114, Wis. Adm. Code deal with safety requirements for the installation, operation, and maintenance of primarily outdoor electric supply and communications lines and facilities used by utilities, including electric and telephone suppliers, railroads, and cable television providers.

A statement of scope on this rule was approved by the Commission on June 1, 2006, and was published in the Wisconsin Administrative Register on Mid-June 2006. Meetings of the Technical Advisory Committee were held on September 28, 2006, November 10, 2006, and December 8, 2006.

Initial Regulatory Flexibility Analysis

Utilities and others subject to the proposed rules, including municipally-owned electric utilities that serve in rural areas, may experience modest increases in the cost of new rural distribution construction due to the proposed increased requirements for grounding rural lines. The proposed rules will have no effect on small business.

Fiscal Estimate

This rule has no fiscal impact.

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 obtain this document in a different format should contact the docket coordinator listed below.

Questions regarding this matter may be directed to docket coordinator Mohammed Monawer at (608) 266-3900. Hearing or speech-impaired individuals may also use the Commission's TTY number: (608) 267-1479.

Submittal of proposed rules to the legislature

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

Health and Family Services

(CR 05–052)

Ch. HFS 107, relating to private duty nursing and respiratory care service benefits covered by the Wisconsin Medical Assistance Program.

Public Instruction

(CR 06–094)

Ch. PI 40, relating to youth options program.

Public Instruction

(CR 06–098)

Ch. PI 30, relating to grants for high cost special education.

Transportation

(CR 06–129)

Ch. Trans 276, relating to allowing the operation of certain 2-vehicle combinations on certain highways without a permit.

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.

Financial Institutions – Corporate and Consumer Affairs

(CR 06–122)

An order affecting ch. DFI–CCS 5, relating to UCC search requests.
Effective 4–1–07.

Financial Institutions – Banking

(CR 06–123)

An order affecting ch. DFI–Bkg 80, relating to non-judicial enforcement and surrender of collateral.
Effective 4–1–07.

Financial Institutions – Banking

(CR 06–124)

An order affecting ch. DFI–Bkg 77, relating to pawnbrokers.
Effective 4–1–07.

Natural Resources

(CR 06–102)

An order affecting ch. NR 660 to 666, relating to hazardous waste management.
Effective 4–1–07.

Podiatrists Affiliated Credentialing Board

(CR 06–056)

An order affecting chs. Pod 1 and 3, relating to waiver of

continuing podiatric medical education.
Effective 5–1–07.

Public Service Commission

(CR 06–017)

An order repealing ch. PSC 98, relating to rules adopted to meet all requirements in s. 300.304 of the regulations of the Federal Price Commission.
Effective 5–1–07.

Public Service Commission

(CR 06–046)

An order affecting chs. PSC 7 and 172, relating to assessments attributable to acid deposition studies and monitoring activities, the regulation of certain wireless telecommunications providers, radio common carriers, the repeal of obsolete language and the updating of rule language to be in conformity with current drafting conventions.
Effective 5–1–07.

Transportation

(CR 06–077)

An order affecting ch. Trans 515, relating to contractual service procurement.
Effective 4–1–07.

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