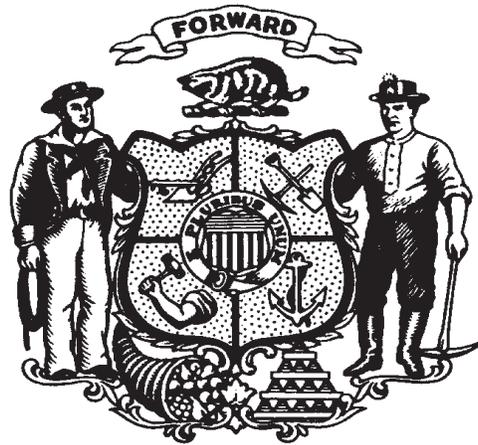


# Wisconsin Administrative Register

No. 620



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## Emergency Rules Now in Effect

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

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

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

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

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

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

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### Agriculture, Trade & Consumer Protection

Rules adopted creating **s. ATCP 21.20**, relating to voluntary certification of firewood dealers.

#### Finding of Emergency

(1) The Wisconsin department of natural resources ("DNR") has adopted rules, under s. NR 45.04 (1) (g), to restrict the movement of firewood into Wisconsin state parks. The DNR rules are designed to prevent the spread of exotic pests, such as Emerald Ash Borer, that may inhabit firewood. The DNR rules prohibit the possession of firewood in a state park unless the firewood comes from within 50 miles from the park, or from a more distant source approved by the Department of Agriculture, Trade and Consumer Protection ("DATCP").

(2) The DNR rules effectively prohibit a firewood dealer located more than 50 miles from a state park from supplying firewood to that state park, except as authorized by DATCP. That prohibition may work a substantial hardship on firewood dealers who normally supply significant quantities of firewood to parks located more than 50 miles away.

(3) This rule creates a voluntary certification program for firewood dealers who obtain their wood from Wisconsin and agree to treat the wood for potential pests such as Emerald Ash Borer. Certified firewood dealers may supply firewood to Wisconsin state parks, even though they are located more than 50 miles from those parks.

(4) DATCP is adopting this rule as a temporary emergency rule, pending completion of "permanent" rulemaking proceedings. DATCP cannot complete permanent rules in

time for the 2007 camping season. Without this emergency rule, certain firewood dealers may experience unnecessary financial hardship during the 2007 camping season, because they will be precluded from supplying firewood to state parks more than 50 miles away. This emergency rule allows those firewood dealers to continue supplying firewood to more distant state parks, subject to sourcing and treatment requirements that are reasonably designed to prevent the spread of serious exotic pests.

**Publication Date:** May 22, 2007  
**Effective Date:** May 22, 2007  
**Expiration Date:** September 19, 2007  
**Hearing Date:** June 26, 2007

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### Commerce

#### (Licenses, Certifications, etc., Ch. Comm 5)

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

#### Exemption From Finding of Emergency

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

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

**Publication Date:** June 1, 2007  
**Effective Date:** June 1, 2007  
**Expiration Date:** October 29, 2007  
**Hearing Date:** June 27, 2007

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### Commerce

#### (Amusement Rides, Ch. Comm 34)

Rule adopted creating **s. Comm 34.22 (5m)**, relating to amusement ride safety.

#### Finding of Emergency

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

1. An amusement ride fatality occurred in Wisconsin on July 14, 2007. The ride involved the field attachment of passengers who don harnesses and then are elevated off the ground.

2. Although no mechanical or equipment failure contributed to the incident, attachment and connection practices of the operators did not incorporate safety practices used on some similar rides in the industry.

3. The department recognizes that without promulgating this emergency rule, there could be confusion in what constitutes a recognized safe practice for the field attachment or connection of harnessed passengers on similar amusement rides. The department believes clarifying the code will promote safety.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and the Revisor of Statutes.

**Publication Date:** August 13, 2007  
**Effective Date:** August 13, 2007  
**Expiration Date:** January 10, 2008

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

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

#### Exemption From Finding of Emergency

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

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

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

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

### Dentistry Examining Board

Rule adopted amending the effective date of CR 04–095, by amending the emergency rule that took effect on December 29, 2006, relating to the requirements for administering the office facilities and equipment for safe and effective administration and the applicable standards of care, and to provide for reporting of adverse occurrences related to anesthesia administration.

#### Finding of Emergency

The board has made a finding of emergency. The board finds that failure to delay the effective date of CR04–095, from July 1, 2007 to November 1, 2007 will create a danger to the public health, safety and welfare. The extra four months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients. The rules created a course requirement for receiving a conscious sedation permit that did not exist. Courses have and are being developed to meet this requirement. By November 1, 2007, the course will have been available to enough dentists to ensure the continuation of the use of conscious sedation.

**Publication Date:** June 24, 2007  
**Effective Date:** July 1, 2007  
**Expiration Date:** November 28, 2007  
**Hearing Date:** July 11, 2007

### Elections Board

Rules adopted creating **s. EIBd 3.50**, relating to pricing of voter information available from the Statewide Voter Registration System.

#### Exemption From Finding of Emergency

The Elections Board finds that under Section 180 of the non-statutory provisions of 2005 Wisconsin Act 451, in subsection (4), the Elections Board may promulgate emergency rules under s. 227.24, Stats., implementing s. 6.36 (6), Stats., as created by Wisconsin Act 451. Notwithstanding s. 227.24 (1) (c) and (2), Stats., emergency rules promulgated under subsection (4) remain in effect until the date on which permanent rules take effect. Notwithstanding s. 227.24 (1) (a) and (3), Stats., the Elections Board is not required to provide evidence that promulgating a rule under subsection (4) as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under subsection (4).

This amended rule interprets ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats. The rule requires that persons who request copies of information from the Statewide Voter registration System must pay, for each such copy, a charge calculated under the provisions of the rule.

At the present time, the Elections Board is limited, in the fee that it can charge for information provided by the Statewide Voter registration System, to the fee set by s. 19.35 (3), Stats.: “the actual, necessary, and direct cost of reproduction and transcription of the record.” In order to recover both the cost of reproduction and the cost of maintaining the list at the state and local level, rather than having its charge be limited to the amount currently provided under the public records law, the Board needs an immediate rule reflecting both cost components required by the new statute.

**Publication Date:** May 12, 2007  
**Effective Date:** May 12, 2007  
**Expiration Date:** See section 180 (4), 2005 Wis. Act 451  
**Hearing Date:** June 11, 2007

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### Health and Family Services (Medical Assistance, Chs. HFS 100—)

Rules adopted revising **ch. HFS 107**, relating to benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

#### Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public, health, safety and welfare. The facts constituting the emergency are as follows:

A recent revision to s. HFS 107.07 (2), the prior authorization subsection of the dental services section of the Medicaid Administrative Code, caused a result which was not intended by the Department. To correct this error, the Department is promulgating rules to clarify that the Department’s intent is to require prior authorization for orthodontia and other services provided under early and periodic screening, diagnosis and treatment (EPSDT) services. The medical necessity of these services is determined by the Department based on information submitted by the provider. Thus, it is necessary to require prior authorization to determine the appropriateness of providing these services to an individual recipient.

In the previous rulemaking (Clearinghouse Rule 05–033) the prior authorization requirement was removed for most procedures that had high rates of approval (greater than 75%). The change was intended to reduce the staff time required for dental offices to process prior authorization requests. The Department did not intend to remove the requirement for prior authorization for orthodontia and other services. The Department specifically stated, in Clearinghouse Rule 05–033, that “Procedures where appropriate pricing requires a high degree of clinical knowledge (e.g., orthodontics and TMJ surgery), and procedures with strict time limitations (e.g., dentures) are also proposed to retain prior authorization.”

The language that was adopted, however, has been interpreted by at least one dentist to mean that prior authorization is no longer required to provide orthodontia to recipients. This interpretation was upheld by an administrative law judge in an administrative hearing. The Department believes that the interpretation of the administrative law judge could open up the Department to being required to pay for procedures that are purely cosmetic. Because the intent of the Department and the language

adopted, as recently interpreted, had opposite effects, the Department is promulgating rules to revise section s. HFS 107.07 to clarify the intent of the rule.

A basic concept of the Medicaid program is that services must be medically necessary to be reimbursable. Allowing the existing rule language to remain in its present form could require reimbursement for orthodontia that is not medically justified.

**Publication Date:** April 30, 2007  
**Effective Date:** April 30, 2007  
**Expiration Date:** September 27, 2007

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

1. Rules adopted revising **chs. NR 19 and 20**, relating to the control of fish diseases and invasive species.

#### Finding of Emergency

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

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a “notifiable” disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large–scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty–seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

**Publication Date:** April 8, 2007  
**Effective Date:** April 8, 2007  
**Expiration Date:** September 5, 2007  
**Hearing Date:** May 3, 10 and 17, 2007

2. Rules adopted revising **chs. NR 19 and 20**, relating to the control of fish diseases and invasive species.

#### 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 World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a “notifiable” disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large–scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois

River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty–seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

This emergency rule clarifies and expands the emergency rules put into effect on April 8, 2007.

**Publication Date:** May 2, 2007  
**Effective Date:** May 2, 2007  
**Expiration Date:** September 5, 2007  
**Hearing Date:** June 11, 2007

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

#### Finding of Emergency

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

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a “notifiable” disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts were infected with the VHS virus. Earlier VHS had been discovered in the Great Lakes, and was known to be moving from the lower lakes (Ontario and Erie), where it has already caused large–scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish disease to reach the Mississippi drainage basin. Twenty–seven species of Wisconsin fish have been identified as susceptible by the OIE or USDAAPHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from infected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in Wisconsin is therefore a threat to the public health or safety or to the environment.

**Publication Date:** May 27, 2007  
**Effective Date:** May 27, 2007  
**Expiration Date:** September 5, 2007  
**Hearing Date:** July 11, 2007

4. Rules adopted amending **s. NR 20.20**, relating to the hook and line harvest of lake sturgeon.

#### Finding of Emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary to prevent excessive harvest of lake sturgeon from the inland waters of Wisconsin during the 2007 hook and line season.

**Publication Date:** July 23, 2007  
**Effective Date:** July 23, 2007  
**Expiration Date:** December 20, 2007  
**Hearing Date:** August 13, 2007

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### Natural Resources (2) (Environmental Protection – Water Regulation, Chs. NR 300–)

1. Rules adopted revising **ch. NR 345**, relating to general permits for dredging in Great Lakes navigable waterways.

#### Finding of Emergency

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

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits for dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove algae, mussels, dead fish and similar large plant and animal nuisance deposits. Without emergency rules to create general permits, all dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits require an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision–making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2007 summer season, with specific standards for operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits.

**Publication Date:** June 10, 2007  
**Effective Date:** June 10, 2007  
**Expiration Date:** November 7, 2007  
**Hearing Date:** July 10, 2007

2. Rules adopted revising **chs. NR 320, 323, 328, 329, 341, 343 and 345**, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

#### Finding of Emergency

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

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits standards that require decontamination of equipment for

invasive species and viruses. Without emergency rules to create new general permit standards, any condition imposed would be limited to individual permits only with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits standards to be in effect for the 2007 summer season, with specific standards that require decontamination of equipment for invasive species and viruses.

In addition, The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

**Publication Date:** July 12, 2007  
**Effective Date:** July 12, 2007  
**Expiration Date:** December 9, 2007  
**Hearing Date:** August 13, 2007

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

Rules adopted revising **ch. DWD 56**, relating to child care enrollment underutilization.

#### **Finding of Emergency**

The Department of Workforce Development finds that an emergency exists and 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 is expected to have a substantial deficit by the end of state fiscal year 2006-07. While many factors will have an impact on the program's final fiscal balance, current spending patterns at current rates suggest that the program will exceed its 06-07 budget authorization by approximately \$46 million. This rule will provide for more efficient use of the program's limited funding.

**Publication Date:** April 1, 2007  
**Effective Date:** April 1, 2007  
**Expiration Date:** August 29, 2007  
**Hearing Date:** June 20, 2007  
**Extension Through:** October 27, 2007

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## Scope Statements

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### Commerce

#### Subject

The rules affect chs. Comm 41 and 45, relating to boilers and pressure vessels and mechanical refrigeration.

#### Objective of the Rule

The objective of the rule is to update the Wis. Adm. Code chapter Comm 41, Boilers and Pressure Vessels, to reflect current national standards and to evaluate administrative and enforcement aspects of the program, and to clarify requirements under chapter Comm 45, Mechanical Refrigeration, relating to materials used for discharge piping from pressure relief devices.

#### Policy Analysis

Since 1957 the state boiler and pressure vessel code has adopted by reference the boiler and pressure vessel code published by the American Society of Mechanical Engineers (ASME). Currently, the 2004 edition of the ASME boiler and pressure vessel code is adopted in chapter Comm 41. The 2007 edition of that model code is now available for adoption. Other standards currently adopted in chapter Comm 41, including ANSI/NB – 23, National Board of Inspection Board, and API 510, Pressure Vessel Code, will also be reviewed for updating.

The alternative of not revising chapter Comm 41 would result in rules not being up-to-date with current national standards.

Under chapter Comm 45, clarifying the relief piping material requirement is expected to improve compliance with the safety requirements of the code and the alternative of not clarifying the code in this area may result in confusion.

#### Statutory Authority

The statutory authority for the rule is contained in ss. 101.02 (15) (h) to (j), 101.17 and 101.177, Stats.

#### Entities Affected by the Rule

The rule will affect any entity involved with the design, construction, installation, operation, inspection, testing maintenance, repair or alteration of boilers or pressure vessels, and mechanical refrigeration.

#### Comparison with Federal Regulations

An Internet-based search for “boilers”, and “pressure vessels” in the *Code of Federal Regulations and the Federal Register* did not identify any existing or proposed federal regulations that address these topics.

An Internet-based search for “mechanical refrigeration” in the *Code of Federal Regulations and the Federal Register* did not identify any existing or proposed federal regulations that address the design and installation of mechanical piping as specified under the scope of chapter Comm 45.

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

The department estimates approximately 400 hours will be needed to review the updated model code and standards and to develop any needed rule changes. This time includes forming and meeting with an advisory council, drafting the rule changes and processing the changes through public

hearings, legislative review, and adoption. The department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

### Insurance

#### Subject

The rules affect chs. Ins 6, 26 and 28, relating to creating a limited line of authority for travel insurance and affecting small business.

#### Policy Analysis

Wisconsin currently has 4 limited lines of insurance authority – credit, title, legal expense and a miscellaneous limited line insurance. These are created and authorized in s. Ins 6.50 (2) (b). Each limited line has requirements set by the Commissioner for testing, prelicensing education and continuing education. The limited line for travel insurance is one established in the NAIC models and most states have authorized it. Once Wisconsin authorizes this line, Wisconsin resident agents could more easily obtain this authority in other states and nonresident Wisconsin agents could obtain authority to sell this type of insurance in Wisconsin.

#### Statutory Authority

Section 628.04 (3), Stats.

#### Entities Affected by the Rule

Insurance agents, travel agencies and employees, insurance companies and any other entity that sells travel insurance.

#### Comparison with Federal Regulations

None

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

200 hours and no other resources are necessary.

### Revenue

#### Subject

The rules affect ch. Tax 2, relating to apportionment of apportionable income of interstate financial institutions.

#### Objective of the Rule

The objective of the proposed rule is to clarify the apportionment formula for entities that may not be included in the current definition of a “financial institution,” but whose receipts are derived from the same types of activities as those performed by financial institutions.

#### Policy Analysis

Existing policies are as set forth in the rules. Since promulgating the rules, the Department is aware of certain entities that perform some of the functions of a financial institution but that may not be included in the definition of a “financial institution.” The proposed rules will clarify the treatment of these entities. If the rules are not changed, they may provide inconsistent treatment of certain receipts when apportioning the income of multistate entities.

#### Statutory Authority

Section 71.80 (1) (c), Stats.

**Entities Affected by the Rule**

Credit card banks, entities that perform credit card activities, and corporations owned by financial institutions, which are engaged in business both in and outside of Wisconsin. Also affected will be entities that prepare Wisconsin franchise or income tax returns for these businesses.

**Comparison with Federal Regulations**

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

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

The department estimates it will take approximately 100 hours to develop this rule order.

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# Submittal of Rules to Legislative Council Clearinghouse

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

## Administration

On August 15, 2007, the Department of Administration submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

Statutory Authority: ss. 16.004 (1), 16.957 (2) (c) and (4) (b), Stats.

Statutes Interpreted: s. 16.957 (1) through (4), Stats.

The proposed rule amends Ch. Adm 43. 2005 Wisconsin Act 141 revised many of the provisions of the earlier 1999 Wisconsin Act 9 and transferred responsibility and funding for energy conservation and renewable programs to non-municipal electric utilities under supervision of the Public Service Commission. However, low income assistance programs for non-municipal electric utility customers were not changed and continue to be funded as they have been and remain the responsibility of the Department of Administration. This rule revision makes the changes necessary to comply with 2005 Wisconsin Act 141. It also makes modifications to the procedure used to collect the low-income assistance fee, to simplify provisions that have proven cumbersome in practice, and to reflect realistic deadlines for various steps in the procedure.

### Agency Procedure for Promulgation

The Department is following the 30-day notice procedure under s. 227.16 (2) (e), Stats., for the promulgation of this rule and consequently does not plan to hold a public hearing. The organizational unit responsible for the promulgation of the proposed rule is the Department of Administration Division of Energy.

### Contact Person

If you have any questions regarding the proposed rule, please contact:

Susan Brown  
Department of Administration  
Telephone: (608) 266-2035  
E-Mail: Susan.Brown@Wisconsin.gov

## Administration

On August 15, 2007, the Department of Administration submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

Statutory Authority: ss. 16.004 (1), 16.957 (2) (c) and (4) (b), Stats.

Statutes Interpreted: s. 16.957 (1) through (4), Stats.

The Department proposes to repeal Ch. Adm 44. 2005 Wisconsin Act 141 amended s. 16.957, Stats., to exclude energy conservation and efficiency and renewable

resource programs from Department duties effective July 1, 2007. The same Act created a similar set of responsibilities for the Public Service Commission also effective July 1, 2007. Separately, the Public Service Commission is preparing a proposal to fulfill its new responsibilities as they become effective.

### Agency Procedure for Promulgation

The proposed rule repeal brings an existing rule into conformity with a statute that has been changed to no longer require the Department's involvement in the energy conservation and efficiency and renewable resource programs. Therefore, pursuant to s. 227.16 (2) (b), Stats., the Department will not hold a public hearing regarding this proposed rule. The organizational unit responsible for the promulgation of the proposed rule is the Department of Administration Division of Energy.

### Contact Person

If you have any questions regarding the proposed rule, please contact:

Susan Brown  
Department of Administration  
Telephone: (608) 266-2035  
E-Mail: Susan.Brown@Wisconsin.gov

## Administration

On August 15, 2007, the Department of Administration submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

Statutory Authority: ss. 16.004 (1), 16.957 (2) (c) and (4) (b), Stats.

Statutes Interpreted: s. 16.957 (1) through (4), Stats.

The proposed rule will amend Ch. Adm 45. 2005 Wisconsin Act 141 revised many of the provisions of the earlier 1999 Wisconsin Act 9 and transferred responsibility and funding for energy conservation and renewable programs to non-municipal electric utilities under supervision of the Public Service Commission. However, low income assistance programs for non-municipal electric utility customers were not changed and continue to be funded as they have been and remain the responsibility of the Department of Administration. The proposed rule amendments remove "public benefits" terminology to clarify that the rule applies only to the low-income assistance program in compliance with 2005 Wisconsin Act 141.

### Agency Procedure for Promulgation

The Department is following the 30-day notice procedure under s. 227.16 (2) (e), Stats., for the promulgation of this rule and consequently does not plan to hold a public hearing. The organizational unit

responsible for the promulgation of the proposed rule is the Department of Administration Division of Energy.

**Contact Person**

If you have any questions regarding the proposed rule, please contact:

Susan Brown  
Department of Administration  
Telephone: (608) 266-2035  
E-Mail: Susan.Brown@Wisconsin.gov

**Health and Family Services**

On August 13, 2007, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects ch. HFS 144, relating to student immunizations.

**Agency Procedure for Promulgation**

A public hearing is required; however, a public hearing has not yet been scheduled for this proposed rule.

**Contact Persons**

For substantive questions on rules contact:

Marjorie Hurie, RN, MS  
Program Consultant  
Immunization Program  
PO Box 2659  
Madison, WI 53701  
608-264-9892

For small business considerations contact:

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

For rules processing information contact:

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

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## Rule-Making Notices

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### Notice of Hearings

#### Agriculture, Trade and Consumer Protection

[CR 07-073]

(Partially reprinted and corrected from 7/31/07  
Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed amendment to chapters ATCP 99, 100, and 101, Wis. Adm. Code, relating to the Agricultural Producer Security.

**[corrected paragraph]**

DATCP will hold three public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Wednesday, October 31, 2007 for additional written comments.

### Notice of Hearings

#### Public Instruction

[CR 07-057 ]

(Partially reprinted and amended from  
7/31/07 Wis. Adm. Register)

NOTICE IS HEREBY GIVEN That pursuant to ss. 118.35 (2), 121.02 (5) and 227.11 (2) (a), Stats., and interpreting s. 121.02 (1) (t), Stats., the Department of Public Instruction will hold public hearings as follows to consider the amending of s. PI 8.01 (2) (t) 2., relating to the identification of gifted and talented children.

#### Hearing Information

The hearings will be held as follows:

Date and Time	Location
<b>August 20, 2007</b> 3:00 – 5:00 p.m.	Eau Claire UW Eau Claire Schneider Hall 1702 Park Avenue Room 225
<b>August 22, 2007</b> 3:00 – 5:00 p.m.	Stevens Point UW – Stevens Point CPS Building 1901 Fourth Avenue Room 116

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Chrystyna Mursky, Consultant, Gifted and Talented, at (608) 267-9273 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

### Copies of Rule, Written Comments, Contact Person

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to [lori.slauson@dpi.state.wi.us](mailto:lori.slauson@dpi.state.wi.us) or by writing to:

Lori Slauson, Administrative Rules and Federal Grants  
Coordinator  
Department of Public Instruction  
125 South Webster Street  
P.O. Box 7841  
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than **September 24, 2007**, will be given the same consideration as testimony presented at the hearing. **[The comment period deadline has been extended.]**

### Notice of Hearing

#### Regulation and Licensing

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and subchapter VII of ch. 440, Stats., as created by 2005 Wisconsin Act 25, renumbered by 2005 Wisconsin Act 254, and amended by 2005 Wisconsin Act 407, and interpreting s. 440.88, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order adopting emergency rules to create chs. RL 160, 161, 162, 163, 166, 167 and 168, relating to substance abuse professionals.

#### Hearing Date, Time and Location

Date: **September 11, 2007**  
Time: 9:15 A.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 September 14, 2007, to be included in the record of rule-making proceedings.

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

##### *Statutes interpreted*

Section 440.88, Stats.

##### *Statutory authority*

Section 227.11 (2), Stats., and Subchapter VII of ch. 440, Stats., as created by 2005 Wisconsin Act 25, renumbered by

2005 Wisconsin Act 254, and amended by 2005 Wisconsin Act 407.

***Explanation of agency authority***

Subchapter VII of ch 440, Stats., was enacted on July 25, 2005. It was amended by Act 407 which was enacted on May 10, 2006. Under subch. VII of ch. 440, Stats., the Department of Regulation and Licensing is required to promulgate rules relating to the issuance and renewal of credentials, requirements for certification, supervised practice, scope of practice, education approval, grounds for discipline and professional liability insurance.

***Related statute or rule***

Section MPSW 1.09, Wis. Adm. Code, which relates to certification of social workers, professional counselors and marriage and family therapists to treat substance use disorder patients as a specialty.

Chapter HFS 75, Wis. Adm. Code, which relates to the certification of substance use disorder treatment clinics and programs.

Section 457.02 (5) and (5m), Stats.

***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. Please refer to the "Summary of factual data and analytical methodologies" section and the section on "Analysis and supporting documentation used to determine effect on small business or in preparation of economic impact report."

Chapter RL 160 is being created to include definitions of terms that are used in subch. VII of ch. 440, Stats., and in chs. RL 160 to 167. The proposed rules include definitions for "accredited," "assessment," "behavioral science field," "CEH," "clinical substance abuse counselor," "clinical supervision," "clinical supervisor," "clinical supervisor-in-training," "comprehensive program," "core functions," "credential," "department," "DSM," "hour," "independent clinical supervisor," "intermediate clinical supervisor," "patient," "practice dimensions," "prevention," "prevention domains," "prevention specialist," "prevention specialist-in-training," "substance," "substance abuse counselor," "substance abuse counselor-in-training," "substance use disorder" and "transdisciplinary foundations."

Chapter RL 161 is being created to identify the requirements and procedures for submitting applications for licenses.

Chapter RL 162 is being created to identify the restrictions and minimum requirements for supervision of counselors by clinical supervisors.

Chapter 163 is being created to identify the scope and restrictions on the practice of the credential holders.

Chapter RL 166 is being created to identify the approval process and educational requirements for educational coursework and continuing education opportunities.

Chapter RL 167 is being created to require credential holders to have liability insurance in effect.

Chapter RL 168 is being created to identify the requirements for continuing education.

***Comparison with federal regulations***

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

***Comparison with adjacent states***

***Illinois:***

The state of Illinois does not credential AODA or Substance Abuse Professionals, but does mandate the certification and use of those professions in their state certified alcohol and drug abuse clinics. This is similar to the status in Wisconsin prior to 2005 Wisconsin Act 25. Under Illinois code: Title 77: Chapter 2060.309 part of the staffing requirements of their clinics require counselors to hold clinical certification as a Certified Alcohol and Drug Counselor issued by the Illinois Alcoholism and Other Drug Abuse Professional Certification Association (IAODAPCA). This is a private, not-for-profit association, which was similar to the defunct Wisconsin Certification Board. Certification is still largely voluntary as certification is not required outside the clinics and there are broad exemptions in the code for certification requirements, which allow other professionals including clinical psychologists, licensed professional counselors, licensed clinical professional counselors, licensed clinical social workers, advanced practice nurses and licensed practical nurses to practice without an AODA certification.

IAODAPCA bases their requirements of those of the International Certification and Reciprocity (IC&RC). To obtain certification as a certified alcohol and drug counselor, an applicant must: hold a high school diploma or GED; complete 225 hours of education; complete 2 years of supervised practice; pass the IC&RC counselor examination. To achieve the certified reciprocal level of drug and alcohol counselor, the applicant must: have a high school diploma or GED; complete 3 years of supervised practice; complete 300 hours of training; complete 300 hours of education; pass the reciprocal level counselor examination as well as the case presentation method (CPM – a written and oral examination provided by the IC&RC). To achieve the supervisor credential, the counselor applicant must demonstrate 5 years of practice as counselor, including 1 year as a clinical counselor, 350 hours of education and the passage of the clinical supervisor examination.

*See: §20 ILCS 301/15–5, 77 Ill. Adm. Code 2060.20 et. seq.*

***Iowa:***

The state of Iowa does not credential AODA or Substance Abuse Professionals, but does mandate the certification and use of those professions in their state certified alcohol and drug abuse clinics. Under Iowa administrative code: 641 IAC 155.21 (8) i part of the staffing requirements of their clinics require that persons providing screening, evaluations, assessments or treatment shall be certified through the Iowa board of substance abuse certification, or certified by an international certification and reciprocity consortium member board in the states of Illinois, Minnesota, Nebraska, Missouri, South Dakota, and Wisconsin. The Iowa board appears to be a private organization, which is similar to the defunct Wisconsin Certification Board. Certification appears voluntary in practice outside of their certified clinics.

The Iowa Board is a member of the IC&RC and as such bases their credentials and requirement off those of the IC&RC. To obtain counselor certifications in Iowa, a person may apply through the educational path or through an experiential pathway. The Iowa certification as a drug and alcohol counselor requires a high school degree or GED and

at least 24 semester hours in substance abuse or a related behavioral science, 150 clock hours of substance abuse specific education and training, and 1000 hours of supervised training. The experiential route requires the high school diploma or GED, 150 clock hours of education and 3,000 hours of supervised training. The advanced level of the certified drug and alcohol counselor requires 700 clock hours of substance abuse related education, 6,000 hours of supervised practice, and passage of the IC&RC counselor examination. There are no supervisor credentials in Iowa, instead a counselor at an equal or higher level of certification may be eligible to supervise.

For reciprocity, if an Iowa certified advanced alcohol and drug abuse counselor wishes to achieve a reciprocal credential, they must complete the written and oral portion of the IC&RC CPM examination.

*See: §641 IAC chapter 155*

*Minnesota:*

Licensed Alcohol and Drug Counselors (LADC's) are governed by Minnesota Statutes section 148C and Minnesota Administrative Code Chapter 4747.

In Minnesota, although licensure is available through the state and certification through the Minnesota Certification Board (MCB – a private organization), state licensure is required for practice, with exemptions for other professional licenses. The certification offered by the MCB is not recognized by the state. Exemption for licensure requirements includes, but is not limited to: licensed physicians; registered nurses; licensed practical nurses; licensed psychological practitioners; members of the clergy; American Indian medicine men and women; licensed attorneys; probation officers; licensed marriage and family therapists; licensed social workers; social workers employed by city, county, or state agencies; licensed professional counselors; licensed school counselors; registered occupational therapists or occupational therapy assistants; city, county, or state employees when providing assessments or case management.

Licensure through the state requires substance abuse education in an accredited school setting, supervised practice hours and a counselor examination provided by the IC&RC or a counselor examination provided by the National Association of Alcohol and Drug Abuse Counselors (NAADAC). The MCB offers certification based upon the standards of the IC&RC, which includes supervised practice requirements, specialized education and training in substance abuse counseling, and counselor examinations. Minnesota, in part to satisfy the standards of the licensure, will accept the certificates provided by the MCB as fulfilling their licensure requirements.

Licensure in Minnesota requires the following (before July 1, 2008): an associate degree or equivalent credit hours; 270 hours of substance abuse related education; completed either the case presentation method (an IC&RC) designed written and Oral examination) or 2,000 hours of supervised practice; passage of the NAADAC or IC&RC Counselor Examination. After July 1, 2008, Minnesota requires: a bachelor's degree including 18 semester credits or 270 clock hours of substance abuse related education; either the case presentation method, or a plan for 2000 hours of professional practice or proof of 2000 hours of professional practice; passage of the NAADAC or IC&RC counselor examination.

Minnesota does not offer separate supervisor credentials other than those through the MCB, which are based off IC&RC supervisory standards. Adequate supervision is provided by a licensed alcohol and drug counselor or another

qualified professional (as determined by the Board), 4 years of substance abuse counseling and 12 hours of training in clinical and ethical supervision.

Minnesota has reciprocity provisions in their statutes. Reciprocity in Minnesota allows applicants with credentials in good standing from other jurisdictions that have substantially equivalent requirements to that of Minnesota's licensure to be licensed. Minnesota requires 40 hours of continuing education for renewal.

*Michigan:*

In Michigan, although certification is not required for most employment, some substance abuse counselors choose to be tested by Michigan's Center for Substance Abuse, within the Michigan Dept. of Community Health. Passage of an examination is required of substance abuse counselors employed by agencies receiving the funding from the office of substance abuse services. Recognition is also available as an apprentice counselor or an addictions counselor. Written examinations must also be passed for certification. In addition, to become a certified addictions counselor (CAC), applicants must demonstrate 3 years of supervised experience within an 8 year period, supply 3 professional references, make a written and oral case presentation, submit 270 hours of substance abuse education, and have completed an approved practicum. They must also sign a code of ethics statement.

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

The professions had previously been under the authority of the Department of Health and Family Services (under ch. HFS 75), who contracted the regulation and certification of substance abuse professionals to the Wisconsin Certification Board, Inc. The Legislative Audit Bureau performed a limited review of the Wisconsin Certification Board, Inc. and issued a report on May 11, 2005.

The rules proposed represent a re-codification of existing standards for certification developed by the Wisconsin Certification Board, Inc. The legislature, under 2005 Wisconsin Act 25 and later amended by 2005 Wisconsin Act 407, set the statutory requirements for the new levels of licensure and mandated that the Department of Regulation and Licensing draft language for certification and regulation of substance abuse professionals.

To assist in promulgation of the rules, the department has held regular meetings with the Substance Abuse Counselors Advisory Committee for recommendations and development of the draft rules. Subsequently, the department promulgated emergency rules effective December 15, 2006 which includes chs. RL 160 to 163 and chs. RL 166 to 168 (the department had promulgated chs. RL 164 and 165 as permanent rules on January 1, 2007). As the emergency rules were promulgated in December of 2006, the final permanent rules (below) are essentially a redraft of the emergency rules, with changes made for errors in the initial drafting, changes in timelines for effective dates of applicability and minor policy changes where prudent – again at the recommendation of the advisory committee.

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

The Department of Regulation and Licensing, based upon the advice of the advisory committee is proposing changes to the existing standards of certification and regulation of substance abuse professionals. The department, to minimize impact on the profession, and preserve the experiential pathway into the profession, has attempted to minimize drastic changes, and make changes only where the advice of the committee and the protection of the public are preserved.

These proposed rules will affect the existing 4,631 credential holders regulated by the department (Database

count of in state active and inactive substance abuse credential holders, as of February 2007). These credential holders may operate at state departmental locations (e.g. Department of Corrections) as well as state certified AODA treatment clinics under ch. HFS 75 (DHFS). An unknown number of certificate holders are likely to be operating in public, not-for-profit private treatment centers and for-profit treatment centers.

There were significant “grandparenting” provisions within the statutes that will ensure that existing (active and renewal) certificate holders will not lose their certification upon transfer if they do not meet the requirements for the new certificate (e.g. higher educational requirements). The grandparenting provisions do not apply for new applicants after December 15, 2006. Those who applied (new applicants) after December 15, 2006 were under the jurisdiction of the department, and as such were required to meet the requirements specified in our rules. Additionally, the department has instituted substantial grace periods for supervision of substance abuse counselors which would allow clinics one year’s time for the supervisors to attain appropriate credentials required for supervision in their clinics.

The department is proposing changes as follows:

*Educational standards:*

- The proposed rules require a minimum of an associate’s degree in a behavioral science to qualify for the clinical level counselor, and by extension, qualification for supervisory certification. This is an increase in educational requirements; however, an underlying degree is often a standard for professional requirements in other professions. This may prevent existing non-clinical substance abuse counselors from accessing higher levels of credentials until they achieve the underlying degree; however, the advisory committee has recommended that for protection of the public, a minimum of an associate’s degree in a related behavioral science field should be instituted.
- The proposed rules reduce the required level of continuing education from 48 hours in the biennium to 40 for both substance abuse counselors and clinical substance abuse counselors. This is a reduction for applicable credential holders.
- The proposed rules eliminate the existing system of pre-certification education and training from multiple and separate sources, including Wisconsin Certification Board, Inc. accredited programs, endorsed trainings, seminars and home study (etc.), and require that the core training for the effective treatment of substance use disorder treatment be obtained from comprehensive and cohesive programs.

Note: The changes to the educational structure may be the primary area affecting the practice of small business. As per above, companies that operate as a small business do sell home study programs and trainings to the Wisconsin substance abuse professional education market. One such business, Laban’s Trainings of Pennsylvania (<http://www.last-homestudy.com>)<sup>3</sup> employees, unknown earnings), sells home study programs to the AODA counselor community nationwide. They were an endorsed trainer of the WCB, prior to the transference of AODA regulation from the WCB to the DRL, and home study programs such as theirs could be counted for over 200 hours of the 360 hours of training required. The remainder was required to come from association sponsored workshops, seminars and school-based coursework.

Under the new rules, program providers like Laban’s still have access to the certificate holders through the offering of continuing education programs required for recertification. For substance abuse counselors, that means 40 hours of continuing education is required in the biennium (a reduction from 48 hours to 40). In addition, Laban’s and other home study providers may still access the market held by “comprehensive program providers” because the rules are written to restrict individuals from assembling their own education from untracked or uncoordinated sources, however, the rules allow those program providers to assemble the comprehensive program of 360 hours that they provide to their students. This assembled program may include a local provider which could source a 3rd party such as Laban’s to supplement the coursework requirement.

*Practice restrictions:*

The proposed rules contain scope of practice and restrictions which include:

- Restrictions on the practice of substance abuse counselors-in-training: This credential does not assure competency; therefore, a clinical supervisor will be required to authorize the in-training counselor to provide functions when adequately trained to assure competency.
- The supervision of in-training counselors may not be done by clinical supervisors-in-training.
- Clinical supervisors will be legally and ethically responsible for the practice of their supervisees, shall have the authority and responsibility to provide emergency consultation, interrupt/stop unsafe practice and to terminate the supervised relationship if necessary.
- New definitions of who may provide supervision or qualify as a clinical supervisor: Supervision may only be provided by those with exemptions under the statutes (psychologists, psychiatrists, clinical substance abuse supervisors, or ch. 457, Stats., credential holders who have obtained a clinical supervision certification via their specialty AODA certification under s. MPSW 1.09).

These changes may affect small business; however, where standards were increased, the department is proposing grace periods for these requirements. Additionally, these changes were seen as necessary to achieve the minimal competency required for safe practice and protection of the public.

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 Divisions of Management Services, Professional Credentialing, Office of Legal Counsel and Office of Examinations. The one-time salary and fringe costs in the Division of Professional Credentialing, Office of Legal Counsel and Office of Examinations are estimated at \$22,900. The on-going salary, fringe, supplies and services costs in the Division of Professional Credentialing, Division of Board Services and the Office of Examinations are estimated at \$77,300.

**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](mailto: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](mailto:pamela.haack@drl.state.wi.us). Copies of the emergency rules can be obtained from Ms. Haack.

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## Submittal of Proposed Rules to the Legislature

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

### **Health and Family Services**

**(CR 07-060)**

Ch. HFS 133, relating to home health agencies.

### **Transportation**

**(CR 07-064)**

Ch. Trans 195, relating to fees and procedures for searches and documentation of Division of Motor Vehicle records.

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## Rule Orders Filed with the Revisor of Statutes Bureau

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

### **Agriculture, Trade and Consumer Protection (CR 06-130)**

An order affecting ch. ATCP 112, relating to credit report security freezes.  
Effective 10-1-07.

### **Health and Family Services (CR 07-053)**

An order affecting ch. HFS 119, relating to the health insurance risk-sharing program.  
Effective 10-1-07.

### **Insurance (CR 07-023)**

An order affecting ch. Ins 50, relating to annual audited financial reports, annual financial statements and examinations.  
Effective 10-1-07.

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

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*The following administrative rule orders have been adopted and published in the August 31, 2007, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

### Commerce (CR 07-007)

An order affecting chs. Comm 5 and 20, relating to dwelling contractor certification. Effective 9-1-07 and 1/1/08.

#### Summary of Final Regulatory Flexibility Analysis

The proposed rules implement the mandates imposed by 2005 Wisconsin Act 200. The Act establishes educational obligations for contractors who need to obtain building permits involving work on one- and two-family dwellings. The department does not believe that the proposed rules will increase the effect on small businesses over that imposed by the Act.

#### Summary of Comments by Legislative Review Committees

No comments were received.

### Health and Family Services (CR 06-053)

An order affecting ch. HFS 132, relating to nursing homes and affecting small businesses. Effective 9-1-07.

#### Summary of Final Regulatory Flexibility Analysis

The proposed rules may affect a substantial number of small businesses that are nursing homes, but the proposed rules will not have an adverse significant economic impact on those businesses.

#### Summary of Comments by Legislative Review Committees

No comments were received.

### Health and Family Services (CR 06-086)

An order affecting ch. HFS 172, relating to pools and water attractions. Effective 2-1-08.

#### Summary of Final Regulatory Flexibility Analysis

Operations that are built or redesigned so that pools will be direct sources of income will face additional training and labor costs. Most pools in Wisconsin are swimming pools or spas designed and operated as an amenity to lodging. These operations will feel little or no impact from the proposed revisions.

#### Summary of Comments by Legislative Review Committees

The Assembly Committee on Public Health requested a meeting with the Department. The Department submitted germane modifications to the rule. No further comments were received.

### Natural Resources (CR 06-105)

An order affecting ch. NR 22, relating to fishing on the boundary waters of Wisconsin and Iowa. Effective 9-1-07.

#### Summary of Final Regulatory Flexibility Analysis

This rule will affect 3 Wisconsin-licensed commercial fishers who currently actively pursue shovelnose sturgeon in Wisconsin-Iowa boundary waters. These fishers will likely see an initial decrease in pounds of fish harvested until the number of fish in the stock in the size range allowed by the proposed harvest slot increases.

#### Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On May 30, 2007, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments as a result of this hearing.

### Natural Resources (CR 06-121)

An order affecting ch. NR 820, relating to annual reporting of groundwater pumping from high capacity wells, designation of groundwater management areas, environmental review of high capacity well applications for impacts on groundwater protection areas and springs and the evaluation of wells with greater than 95% water loss. Effective 9-1-07.

#### Summary of Final Regulatory Flexibility Analysis

High capacity wells are owned by a wide range of entities including individuals, municipalities, other units of government, large corporations and small businesses. The review and approval processes specified in the proposed rule for high capacity well applications submitted by small businesses are the same as those for applications submitted by any other applicant. While the proposed rule creates a screening process to identify those wells that will be subject to more comprehensive evaluation, the criteria are related to the characteristics of the proposed well rather than the nature of the owner. The potential impacts on small businesses will be the same as the impacts experienced by other applicants.

The department anticipates a very small percentage of high capacity well applications will require an extensive environmental review and there is a reasonable likelihood that only a few of those will be on behalf of a small business. The department believes that this proposed rule will not have a significant impact on a substantial number of small businesses.

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

The proposed rule was reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. The Senate Committee on Environment and Natural Resources held a public hearing on May 1, 2007 and the Assembly Committee on Natural Resources held a public hearing on April 25, 2007. The Department did not receive any comments from the committees following these public hearings.

#### **Natural Resources (CR 06-132)**

An order affecting ch. NR 5, relating to mandatory boating education, temporary certifications and course fees. Effective 9-1-07.

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

Small businesses, which operate as boat rental agents and want to participate in issuing temporary boating safety certifications, will be required to:

1. Administer the training necessary for the public to take the boating safety exam. If the person passes the exam, the boat rental agent will then issue the temporary boating safety certificate to that individual who took the exam.
2. The boat rental agent will collect the fees as prescribed for the boating safety test and temporary certificate. If a business chooses to participate in this program, they shall by December 31 annually send a roster of the individual's information to the department and remit 50% of the monies collected to the department at the same time.
3. Maintain a record of individuals they certify and make those records available for inspection by the department if requested during normal business hours.

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

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On April 25, 2007, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments on the proposed rule following the public hearing.

#### **Natural Resources (CR 06-133)**

An order affecting ch. NR 5, relating to registration of boats used exclusively to make advertisements and creating definitions. Effective 9-1-07.

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

This rule does not impose any compliance or reporting requirements for small businesses. 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 Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On April 25, 2007, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments on the proposed rule following the public hearing.

#### **Natural Resources (CR 06-134)**

An order affecting ch. NR 19, relating to establishing specialized fees for Internet based ATV and snowmobile safety certification programs. Effective 9-1-07.

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

This rule is applicable to individuals and imposes no compliance or reporting requirements for small businesses. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

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

The proposed rules were reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Rural Economic Development. On May 16, 2007, the Assembly Committee held a public hearing. The Department did not receive any comments following this hearing.

#### **Transportation (CR 06-135)**

An order affecting ch. Trans 138, relating to dealer facilities, records and licenses. Effective 9-1-07.

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

The Department believes the proposed rule will have no impact on the vast majority of licensed Wisconsin motor vehicle dealers who sell automobiles, except to the extent it protects them from unfair competition from persons attempting to sell vehicles in Wisconsin without permanent facilities here.

Wisconsin currently does not have any business that holds a Wisconsin dealer license without business facilities in this state. Therefore, the Department does not anticipate any impact from making the business facility requirement more evident in the controlling regulations.

The amendment to the rule making which permits out-of-state motor home dealers to participate in a limited number of Wisconsin motor home rallies is not expected to have a material effect on Wisconsin motor home dealers. Moreover, dealer franchise agreements provide additional protection to Wisconsin dealers beyond the provisions of this regulation. Nothing in this regulation prohibits dealers from enforcing the geographic restrictions of their franchise agreements.

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

No comments were received.

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## Sections Affected by Rule Revisions and Corrections

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The following administrative rule revisions and corrections have taken place in **August 2007**, 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

#### Commerce

##### Ch. Comm 5

- S. Comm 5.01 (4) (a)
- S. Comm 5.02 Table
- S. Comm 5.06 Table
- S. Comm 5.10 (1) (a) and (b)
- S. Comm 5.31
- S. Comm 5.315

##### Ch. Comm 20

- S. Comm 20.09 (2) (b) and (5)

#### Health and Family Services

##### Ch. HFS 132

- S. HFS 132.11
- S. HFS 132.12
- S. HFS 132.13 (2), (6), (13), (14), (15), (19) and (33)
- S. HFS 132.14 (3) (a) and (bm) and (4) (b)
- S. HFS 132.16
- S. HFS 132.31 (1) (a) to (c), (e) to (o), (2), (3), (4) (a) and (c), (5), (6)
- S. HFS 132.32
- S. HFS 132.41 (3)
- S. HFS 132.42 (2)
- S. HFS 132.43
- S. HFS 132.44 (3)
- S. HFS 132.45 (4)
- S. HFS 132.52 (1)
- S. HFS 132.53 (2) (b) and (4) (c)
- S. HFS 132.60 (1) (a), (c) and (e), (2) (c), (4), (5) (a), (b), (d) and (e), (6) (a), (b), (c), (d) and (g), (7) and (8) (a), (b), (c) and (d)
- S. HFS 132.61 (1) (a), (b) and (c) and (2)
- S. HFS 132.62 (1) (a) and (b), (2) (a), (b) and (c) and (3) (a), (b) and (c) to (h)
- S. HFS 132.63 (2) (c), (3), (4) (a) and (b), (5) (a), (b), (d) to (f), (6), (7) (a), (b) and (c) and (8)
- S. HFS 132.64 (2) (a)

- S. HFS 132.65 (3) and (6) (a) and (f)
- S. HFS 132.66
- S. HFS 132.67 (2) and (4)
- S. HFS 132.68 (2) (a) and (b) and (4) (a) and (b)
- S. HFS 132.69 (1) and (2)
- S. HFS 132.695 (3) (a) and (b), (4) (a), (b) and (c)
- S. HFS 132.70 (2) (a), (b) and (c), (3) (b), (4) (a) and (b), (5), (6) and (7) (a)
- S. HFS 132.71 (1) (a), (b) and (c), (2) (b), and (3) to (6)
- S. HFS 132.72 (2) (a) to (d), (4) (a) and (b), (5) and (6)
- S. HFS 132.82 (3) (d) and (f) to (i)
- S. HFS 132.83 (2), (3) (a) to (c), (5), (6), (7) (b), (c), (d), (e), (f), (g), (h) and (j)
- S. HFS 132.84 (1) (a), (b), (c), (d), (e), (f), (j), (k), (2) (b) to (d), (e), (f), (g), (5), (6) (b) to (d), (7) to (14) and (16)

##### Ch. HFS 172 (Entire Chapter)

#### Natural Resources

##### Ch. NR 5

- S. NR 5.001 (7g), (7m), (7r), (11g), (11m), (11r) and (12m)
- S. NR 5.01 (5)
- S. NR 5.18

##### Ch. NR 19

- S. NR 19.50

##### Ch. NR 22

- S. NR 22.02 (2) and (6g)
- S. NR 22.11 (2m)

##### Ch. NR 820 (Entire Chapter)

#### Transportation

##### Ch. Trans 138

- S. Trans 138.03 (1) (a) and (6)
- S. Trans 138.08 (5)

### Editorial corrections

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

#### Commerce

##### Ch. Comm 20

- S. Comm 20.08 (1)
- S. Comm 20.13 (2)

#### Health and Family Services

##### Ch. HFS 132

- S. HFS 132.70 (2) (c)

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## Sections Affected by Revisor's Corrections Not Published

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**Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.**

**Subscriber's note:** Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
DWD 270.12 (2) (b) 2. (intro.)	HFS 172.05 (2) (b) 3.	HFS 172.23 (1) (d)

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## Executive Orders

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

**Executive Order 207.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Corporal Matthew Zindars of the United States Marines Who Lost His Life During Operation Iraqi Freedom.

**Executive Order 208.** Relating to a Proclamation Declaring a State of Emergency Relating to Drought Conditions.

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