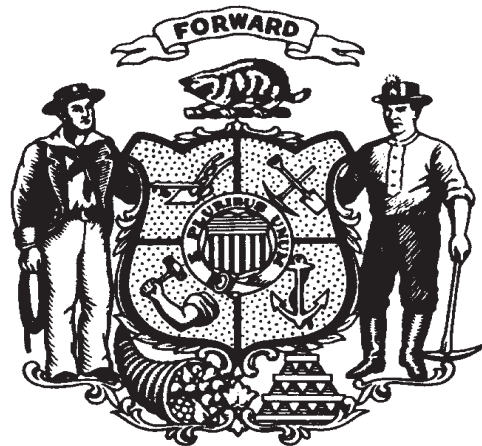


# Wisconsin Administrative Register

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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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### Commerce

#### (Financial Assistance for Businesses & Communities, Chs. Comm 105—)

Rules were adopted creating **ch. Comm 129**, relating to technology commercialization programs.

#### Finding of Emergency

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

1. In accordance with sections 560.205 (3) and 560.275 (7), Stats., the department has the responsibility to promulgate rules to administer an Early Stage Business Investment Program and a Technology Commercialization Grant and Loan Program.

2. Section 560.205 (1) and (2), Stats., makes available certain tax benefits for investors in early stage businesses for tax years beginning after December 31, 2004.

3. Section 560.275 (2), Stats., makes available grant and loan program funds appropriated as of July 1, 2004.

4. The department, being the agency with primary authority for economic development in the state, recognizes that there is a verified need to assist the development of high growth early stage technology businesses. Wisconsin has historically ranked low in the development of new start-ups and in the attraction of risk capital.

5. The department recognizes that promulgating this emergency rule will alleviate the need for investors to defer investments into qualified new businesses while they wait for the promulgation of the permanent rule. Such a circumstance would effectively halt new investment into early stage high tech companies in Wisconsin, a result that would be contrary to the intent of the legislation.

6. In addition, the department recognizes that without promulgating this emergency rule, the department would likely be unable to fully utilize the funds made available to benefit early stage businesses.

7. Finally, the department recognizes that without promulgating this emergency rule, Wisconsin's early stage businesses would be unable to compete fairly to attract much-needed risk capital and federal research dollars to Wisconsin.

**Publication Date: December 2, 2004**

**Effective Date: December 2, 2004**

**Expiration Date: May 1, 2005**

**Hearing Date: January 12, 2005**

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### Elections Board

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

#### Finding of Emergency

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

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

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, EIBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under



circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

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

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

## Insurance

Rules were adopted creating **ch. Ins 14**, Wis. Adm. Code, relating to vehicle protection plans.

### Finding of Emergency

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

The statute requiring these changes is effective on December 1, 2004. The length of the rulemaking process has not permitted OCI to finish promulgating the rule. This emergency implementation will allow vehicle protection businesses to start getting registered and selling their products. Many of these products are promoted as safety related such as glass etching, the “club,” vehicle entry warning sirens and others. Consumer would then be able to obtain the promoted safety benefits of these products as soon as the legislature permitted them.

**Publication Date:** December 10, 2004  
**Effective Date:** December 10, 2004  
**Expiration Date:** May 9, 2005  
**Hearing Date:** January 11, 2005

## Natural Resources (Fish, Game, etc., Chs. NR 1–)

Rules were adopted revising **s. NR 20.33 (5) (c)**, relating to the closure of sturgeon spearing on the Lake Winnebago system.

### Finding of emergency

The Department of Natural Resources find that an emergency exists and a rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

During the 2004 sturgeon spearing on Lake Winnebago, spearers harvested a record 1,303 sturgeon on opening day, exceeding the season harvest cap for adult female sturgeon. The spearing season lasted only two days and resulted in an overall harvest of 1,854 sturgeon. The total harvest included 822 males, 348 juvenile females, and 684 adult females, 509 of which came on opening day, exceeding the harvest cap of 425. Population reduction due to overharvest of lake sturgeon could take years to reverse given the life history of lake sturgeon.

**Publication Date:** February 2, 2005  
**Effective Date:** February 2, 2005  
**Expiration Date:** July 2, 2005  
**Hearing Date:** February 23, 2005

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

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

### Finding of emergency

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

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

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

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

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

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



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

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

2. Rules adopted creating **ch. NR 328, subch. III**, relating to shore erosion control on rivers and streams.

#### Finding of emergency

SECTION 2. FINDING. The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit.

To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2005 construction season, with specific standards for shore erosion control structures on rivers and streams.

**Publication Date:** April 8, 2005  
**Effective Date:** May 1, 2005  
**Expiration Date:** September 28, 2005  
**Hearing Date:** May 16, 2005

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### Public Instruction

Rules adopted repealing **s. PI 24.02 (3)** and repealing and recreating **subchapter II of chapter PI 24**, relating to the payment of state aid under the student achievement guarantee in education (SAGE) program.

#### Finding of emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Section 118.43 (6m), Stats., requires the department to promulgate rules to implement and administer the payment of state aid under s. 118.43 (6), Stats. Because the next deadline for pupil reporting requirements occurs in January 2005, the rule must take effect as soon as possible to give eligible schools enough notice to meet such requirements.

**Publication Date:** December 20, 2004  
**Effective Date:** December 20, 2004  
**Expiration Date:** May 19, 2005  
**Hearing Date:** January 14, 2005

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### Regulation and Licensing

Rules adopted creating **ch. RL 150 to 154**, relating to the licensure and regulation of athlete agents.

#### Exemption from finding of emergency

SECTION 4. Nonstatutory provisions of 2003 Wisconsin Act 150 states in part:

(2) The department of regulation and licensing may, using the procedure under section 227.24 of the statutes, promulgate the rules under section 440.9935 of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department 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 findings of emergency for rules promulgated under this subsection.

#### Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: s. 227.11 (2), Stats., and ss. 440.99, 440.991, 440.915, 440.992, 440.9925, 440.993, 440.9935, 440.994, 440.9945, 440.995, 440.9955, 440.996, 440.9975, 440.998 and 440.999, Stats., as created by 2003 Wisconsin Act 150.

Statutes interpreted: Chapter 440, Subchapter XII.

This emergency rule is promulgated pursuant to 2003 Wisconsin Act 150. This Act grants the Department of Regulation and Licensing the authority to create rules relating to the licensure and regulation of athlete agents.

In this order adopting emergency rules the Department of Regulation and Licensing creates rules relating to the licensure of athlete agents. These rules are as a result of 2003 Wisconsin Act 150 which enacted the Uniform Athlete Agents Act. Chapters RL 150 to 154 establish requirements and standards for registration and the practice of registered athlete agents. The rules specify the registration requirements for temporary and permanent registration, renewal requirements, and prohibited conduct for athlete agents.

SECTION 1 creates Chapter RL 150 which sets forth the statutory authority and the definitions for the proposed rules.

SECTION 2 creates Chapter RL 151 which sets forth the application process and requirements for an initial certificate of registration, including the application process for a temporary certificate of registration.

SECTION 3 creates Chapter RL 152 which sets forth the application process and requirements for renewal of a certificate of registration.

SECTION 4 creates Chapter RL 153 which outlines the standards of practice which apply to a credential holder.

SECTION 5 creates Chapter RL 154 which defines unprofessional conduct.

**Publication Date:** October 5, 2004  
**Effective Date:** October 5, 2004  
**Expiration Date:** March 4, 2005  
**Hearing Date:** November 12, 2004  
**Extension Through:** May 2, 2005

## Revenue

Rules adopted revising s. **Tax 18.07**, relating to the assessment of agricultural land.

### Finding of emergency

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

Pursuant to s. 70.32 (2r) (c), the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5–year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 50 year average interest rate for a medium–sized, 1–year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three–year lag in determining the 5–year average. Thus, the 2003 use value is based on the 5–year average corn price, cost and yield for the 1996–2000 period, and the capitalization rate is based on the 5–year average interest rate for the 1998–2002 period. The 2005 use value is to be based on the 5–year average corn price, cost and yield for the 1998–2002 period, and the capitalization rate is to be based on the 2000–2004 period.

The data for the 1998–2002 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1998–2002 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2005.

**Publication Date:** December 29, 2004  
**Effective Date:** December 29, 2004  
**Expiration Date:** May 28, 2005

## Transportation

Rules adopted creating ss. **Trans 254.12 (6) and 255.12 (17)**, relating to the issuance of single and multiple trip oversize and overweight permits.

### Finding of emergency

The Department of Transportation finds that an emergency exists and that the rule is necessary for the immediate preservation of the public safety and welfare. Although the Department will pursue promulgation of this rule through normal procedure, the Department finds an emergency exists for the following reasons: (1) current administrative rules

have size limitations that prevent the use of the Milwaukee Expressway for vehicles or load or dimensions greater than 11 feet in width, 13½ feet in height, or 100 feet in length on the Milwaukee Freeway; (2) structural beams and girders that exceed the above transport limits are currently being manufactured for the initial stages of construction of the Marquette Interchange Reconstruction project; and (3) these steel and concrete bridge components must be delivered to the construction site beginning in February 2005 to keep the project on time and on–budget. Routing these oversized loads on the Milwaukee surface street system may not be possible due to the load lengths and the turning radiuses required. If the street geometry does allow the movement, these street systems may not be designed to carry the weight of such loads. Doing so will result in unsafe and possible permanent damage to the surface street system. Without this rule amendment, the other alternative is to reduce the size of these structural members (beams and girders) to meet these existing size limitations which will significantly increase the total projects costs and the time required to complete the project because of the necessary redesign.

**Publication Date:** February 1, 2005  
**Effective Date:** February 1, 2005  
**Expiration Date:** July 1, 2005  
**Hearing Date:** March 1, 2005

## Veterans Affairs

Rules adopted creating ss. **VA 13.02 (2) (e), 13.04 (3), and 13.06**, relating to the veterans assistance program.

### Finding of emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the finding of emergency is:

The department operates two community–based residential care facilities and a residential care apartment complex facility in Union Grove. As a condition of admission and continued residency at the facilities a veteran must be able to pay the full cost of his or her care from income and other resources.

Care rates at the facilities were raised across–the–board in October 2004. Several current residents do not now have sufficient income or other resources to fully pay their cost of care. Furthermore, several recent applicants with limited income and resources have been denied admission because they fall just short of meeting their care costs. Both groups of veterans do not have adequate housing available for their needs, other than residency at the Union Grove facilities.

In light of these circumstances, the department determines that the health and safety of the current and prospective residents is threatened unless adequate funding is made available. Enactment of the emergency will permit the department to provide the subsidy necessary to address these concerns.

**Publication Date:** January 3, 2005  
**Effective Date:** January 3, 2005  
**Expiration Date:** June 1, 2005  
**Hearing Date:** February 16, 2005

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## Workforce Development

### (Labor Standards, Chs. DWD 270–279)

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

#### Finding of emergency

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

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

#### Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

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

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

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

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03. “Companionship services” is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term “companionship services” does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

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

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

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

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## Workforce Development

### (Public Works Construction, Chs. DWD 290–294)

A rule was 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 the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

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 20, 2004**  
**Effective Date:**       **January 1, 2005**  
**Expiration Date:**     **May 30, 2005**  
**Hearing Date:**        **February 14, 2005**



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## Scope statements

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### Commerce

#### Subject

*Objective of the rule.* The objective of the rule is to create chapter Comm 130 in response to 2003 Wisconsin Act 99. This act directs the Department of Commerce to promulgate rules for the certification of manufacturing businesses as eligible to claim certain tax credits.

#### Policy analysis

Existing Policies. There are no existing policies for the certification of manufacturing businesses for eligibility to claim certain tax credits.

New Policies. The rule will certify manufacturing businesses as eligible to claim tax credits under section 71.07 (3t), 71.28 (3t) or 71.47 (3t), Stats.

Policy Alternatives. The alternative of not promulgating the rule would result in failure to comply with 2003 Wisconsin Act 99.

#### Statutory authority

Section 560.28, Stats., as created by 2003 Wisconsin Act 99.

#### Staff time required

The Department estimates that it will take approximately 200 hours to develop this rule. This time includes meeting with affected industry groups, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

#### Entities affected by the rule

The rule will affect manufacturing businesses that use fuel and electricity for manufacturing tangible personal property in Wisconsin.

#### Comparison with federal requirements

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

### Labor and Industry Review Commission

#### Subject

Rules of procedure of the Labor and Industry Review Commission. Administrative Code Reference: ch. LIRC 1-4.

*Objective of the rule.* The commission proposes to update and reorganize ch. LIRC 1-4 to clarify provisions relating to when, where and how petitions for commission review may be filed, to create a provision allowing petitions for review to be filed electronically through the commission's website in Unemployment Insurance and Workers Compensation cases, and to clarify provisions relating to use of hearing transcripts, synopses and summaries of evidence, and audio recordings of hearing by the commission in conducting its review.

#### Policy analysis

The commission reviews and decides appeals of decisions of administrative law judges of the Department of Workforce Development in cases arising under Wisconsin's

unemployment insurance, workers compensation, employment discrimination and public accommodations discrimination laws. The commission's rules govern practice and procedure in such appeals.

Cases are appealed to the commission by filing a petition for review. Changes in available technologies, and in practice in the DWD divisions with respect to receipt and processing of petitions, have led the commission to conclude that it would be beneficial to update and clarify the provisions of its rules of practice governing when, where and how petitions for commission review may be filed. This will include adding a provision allowing petitions to be filed electronically in certain cases. The intended purpose of these changes is to make those provisions easier to understand, to make it easier to file petitions, and to reduce the occurrence of disputes about whether a petition has been properly filed.

The commission reviews cases based on the record made in the administrative proceedings below. The record may be in one or more of several forms (tape audio recording, digital audio recording, court reporter's notes, summary or synopsis of testimony, verbatim transcript). Changes in technologies used to preserve the record, and changes in practice in the DWD divisions with respect to record, have led the commission to conclude that it would be beneficial to update and clarify the provisions of its rules of practice governing how the record may be submitted for the commission's use in its review, what form of record the commission will use in particular cases, and how and on what terms copies of the record will be made available to the parties and others. The intended purpose of these changes is to make those provisions easier to understand, to ensure that the best record is used by the commission in its review, and to ensure that all parties have fair and equal access to copies of the record used by the commission in reviewing their cases.

#### Statutory authority

Section 103.04 (2).

#### Staff time required

The commission estimates that it will take 40 hours of staff time to promulgate the proposed changes to ch. LIRC 1-4.

#### Entities affected by the rule

The entities affected by the proposed rules are parties to contested cases which are appealed to the commission.

#### Comparison with federal requirements

There are no federal regulations governing procedure before the commission.

### Natural Resources

#### Subject

*Objective of the rule.* The objective of the proposed rules is to close commercial clamming on the Mississippi River.

#### Policy analysis

The Department is beginning the administrative process to close commercial clamming on the Mississippi River.

Wisconsin's Commercially harvestable native freshwater mussel stocks are in significant decline, especially in zebra mussel-infested waterbodies. Although commercial demand

has weakened since 1997, reinstatement of commercial harvest will accelerate ongoing declines in stocks.

Surveys done since 1998 in historically harvested river reaches have demonstrated extreme reductions in population densities and the near absence of recruitment. These losses have primarily been attributed to the negative effects of colonization by the non–indigenous zebra mussel, which first appeared in Wisconsin in 1990. These recent stock reductions are in addition to documented reductions since 1980 from commercial over–harvest and various die–off events.

Management objectives for commercial mussel stocks in the Mississippi River are to return population densities and recruitment to 1980 levels. These levels are documented in WDNR surveys done from 1976 – 1980. Population declines are based on WDNR, U. S. Fish and Wildlife and U. S. Army

Corps of Engineers surveys done virtually every year since 1976.

**Statutory authority**

Sections 29.537 (8) (a), and 227.11, Stats.

**Staff time required**

Approximately 150 hours will be needed by the Department to develop these rules.

**Entities affected by the rule**

These proposed regulation changes would affect and are of interest to potential commercial clambers.

**Comparison with federal requirements**

There are no federal regulations regarding commercial clamming regulations. That authority is given to the State.

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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.*

### **Optometry Examining Board**

#### **Rule Submittal Date**

On May 2, 2005, the Optometry Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### **Subject Matter**

Statutory authority: ss. 15.08 (5) (b), 227.11 (2) and 449.18 (7), Stats. The proposed rule order relates to conduct, examinations and continuing education.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on June 2, 2005 at 9:30 a.m. in Room 180, 1400 East Washington Avenue, Madison, Wisconsin 53702.

#### **Contact Information**

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

### **Revenue**

#### **Rule Submittal Date**

On April 27, 2005, the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Subject Matter**

The proposed rule creates ch. Tax 18 of the Wisconsin Administrative Code and relates to the 2005 assessment of agricultural land.

### **Agency Procedure for Promulgation**

A public hearing on the proposed rule is required and will be scheduled on May 26, 2005. The Office of the Secretary is primarily responsible for promulgation of the proposed rule.

#### **Contact Information**

Frank Humphrey  
State and Local Finance Division  
Telephone (608) 261-5364  
E-mail: fhumphre@dor.state.wi.us

### **Transportation**

#### **Rule Submittal Date**

On April 22, 2005, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Subject Matter**

The proposed rule affects ch. Trans 117 of the Wisconsin Administrative Code and relates to CDL occupational licenses.

#### **Agency Procedure for Promulgation**

A public hearing is required and a hearing is scheduled for May 26, 2005. The Department's Division of Motor Vehicles, Bureau of Driver Services, is the organizational unit responsible for promulgation of the proposed rule.

#### **Contact Information**

Julie A. Johnson, Paralegal  
608-266-8810



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## Rule–making notices

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### Notice of Hearing Optometry Examining Board [CR 05–036]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Optometry Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 449.18 (7), Stats., and interpreting ss. 449.01 (1), 449.08 and 449.18 (7), Stats., the Optometry Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal the Note following s. Opt 6.03 (2), the Note following ss. Opt 6.04 (1), and Opt 6.05 (4); to renumber s. Opt 6.04 (2); to renumber and amend s. Opt 6.05 (6); to amend the Note following ss. Opt 5.10 (3), Opt 5.16, 6.04 (1), 6.05 (2) (a) and (b) and the Note following s. Opt 6.05 (6); and to create ss. Opt 5.02 (5), 5.08 (2) (d), 6.02 (3), 6.04 (2), (6) and (7) and 6.05 (6) (a) to (o), relating to conduct, examinations, continuing education, and affecting small business.

#### Hearing Date, Time and Location

**Date:** June 2, 2005  
**Time:** 9:30 A.M.  
**Location:** 1400 East Washington Avenue  
 Room 180  
 Madison, Wisconsin

#### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by June 12, 2005 to be included in the record of rule–making proceedings.

#### Analysis prepared by the Department of Regulation and Licensing.

Statutes interpreted: Sections 449.01 (1), 449.08 and 449.18 (7), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) and 449.18 (7), Stats.

Explanation of agency authority: The Optometry Examining Board is authorized under ss. 449.07 and 449.08, Stats., to discipline optometrists for unprofessional conduct and under s. 449.18 (7), Stats., to require applicants for renewal to attend continuing education courses approved by the board.

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

Plain language analysis:

SECTIONS 1 and 2. Under the current law, it is unprofessional conduct for an optometrist to fail to perform a minimum eye examination in certain instances. There are three exceptions to this provision in the current rules. In these rules, the board proposes to add a fourth exception which would permit an optometrist to perform a “limited eye screening” without having to perform a minimum eye

examination. The proposed rules also include a definition of the term “limited eye screening.”

SECTIONS 3 and 4. Under the current law, it is unprofessional conduct for an optometrist to fail to release, upon request by a patient and at no cost to the patient, a copy of the patient’s contact lens prescription following release of the patient from contact lens fitting and initial follow–up care. In these rules, the board proposes to remove the language from the rules that conditions the release of a contact lens prescription upon a patient’s request. This change is consistent with regulations recently adopted by the Federal Trade Commission.

SECTIONS 5 and 11. Under the current law, optometrists who hold certificates to use therapeutic pharmaceutical agents are required to complete 30 hours of continuing education biennially in order to renew their certifications. The current law does not limit the number of continuing education hours that may be obtained through alternative delivery methods such as home–study courses, self–study packages, computer courses, televideo conferencing, or other delivery methods. In these rules, the board proposes to limit the number of hours that may be obtained through alternative delivery methods to 6 hours per biennium. One exception to this limitation would be in instances where certificate holders submit evidence of “hardship.” The proposed rules include a definition of the term “hardship.”

SECTIONS 6 and 8 repeal Notes.

SECTION 9 renumbers a subsection.

SECTION 10. Under the current law, the 30 hours of continuing education that optometrists who hold certificates to use therapeutic pharmaceutical agents are required to complete biennially must relate to the diagnosis and management of eye disease or removal of superficial foreign bodies from the eye or from an appendage to the eye. In these rules, the board proposes to expand the subject matter of continuing education course work to include areas of practice that relate to the “practice of the profession of optometry” as defined in s. 449.01, Stats. Note that the board also proposes to limit the number of hours to six that may be claimed for subject matter that is not specifically related to the diagnosis and management of eye disease or removal of superficial foreign bodies from the eye or from an appendage to the eye.

SECTION 12. Under the current law, the 30 hours of continuing education that optometrists who hold certificates to use therapeutic pharmaceutical agents are required to complete biennially must relate to the diagnosis and management of eye disease or removal of superficial foreign bodies from the eye or from an appendage to the eye. In these rules, the board proposes to expand the subject matter of continuing education course work to include areas of practice that relate to the “practice of the profession of optometry” as defined in s. 449.01, Stats. Note that the board also proposes to limit the number of hours, to six, that may be claimed for subject matter that is not specifically related to the diagnosis and management of eye disease or removal of superficial foreign bodies from the eye or from an appendage to the eye.

SECTION 13 repeals a subsection.

SECTIONS 14 and 15. Under the current law, the board accepts continuing education course work approved by the Council on Optometric Practitioner Education (COPE). The law does not specify the subject matter of COPE courses that

may be taken to satisfy the continuing education requirements. In these proposed rules, the board proposes to specify the subject matter of the COPE courses that may be taken to satisfy the continuing education requirements.

Summary of, and comparison with, existing or proposed federal regulation: The Federal Trade Commission requires a prescriber to provide a patient with a copy of a contact lens prescription when the prescriber completes a contact lens fitting, regardless of whether or not the patient makes a request for a copy of the prescription.

#### Comparison with rules in adjacent states

Minnesota:

The rules specify that under 145.712 Requirements for contact lenses prescriptions. Subdivision 1. Copy of prescription. An optometrist or physician must provide a copy of the patient's prescription upon completion of the patient's eye examination and fitting. An optometrist or physician may refuse to give a patient a copy of the patient's prescription until after the patient has paid for the eye examination and fitting, but only if the optometrist or physician would have required immediate payment from that patient if the examination had revealed that no ophthalmic goods were required.

The rules appear to be silent as to performing a "limited eye screening."

The rules under CE requirements are silent as to any provision or exemptions regarding a "hardship," credit hour limitations in any specific topic or courses approved by COPE. Minnesota does have provisions for acceptable CE requirements and limitations including 40 hours of CE are required in a biennium, allows 15 credits of CE courses received from an alternative delivery method, no more than 8 credits in a biennium may be taken in an optometry related topic, and accept courses approved by Cope (Minnesota R 6500.0900 to 5400.1700).

More may be found at:  
<http://www.revisor.leg.state.mn.us/arule/6500/>

Michigan:

The rules are silent as to performing a "limited eye screening" and Contact Lens Release.

The rules under CE requirements are silent as to any provision or exemptions regarding a "hardship" and CE courses received from an alternating delivery method. However, the rules do have provisions for acceptable CE requirements and limitations including 40 hours of CE are required in a biennium, no more than 8 credits in a biennium may be taken in an optometry related topic, and accept courses approved by Cope (Michigan R 338.256, 338.256a, 338.256b).

More may be found at:

[http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin\\_Num33800251&Dpt=CH&RngHigh=](http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num33800251&Dpt=CH&RngHigh=)

Illinois:

The rules have a provision which is similar to that of the "limited eye screening" and is allowed under Illinois Rules Section 1320.1200 regarding Visual Screening: defined as a limited series of ocular observations, measurements or tests provided without a fee to determine if a complete eye examination, as described in Section 1320.90, by a licensed optometrist or a physician licensed to practice medicine in all of its branches, is recommended.

3) When a visual screening is performed, the recipient of the screening shall be clearly informed in writing and shall receive a copy of the following:

A) Results and limitations of the screening;

B) That the screening is not representative of or a substitute for an eye exam;

C) That the screening will not result in a prescription for visual correction:

D) That visual screening referral criteria for a complete eye examination must meet accepted optometric professional standards criteria; and

E) The name and address of the charitable organization sponsoring the screening and the chairperson of the supervisory committee.

The rules appear to be silent as to the release of contact lens prescriptions.

The rules under CE requirements are silent regarding CE courses received from an alternative delivery method, courses offered by COPE (with the exception of out-of-state CE courses), and maximum CE credits per topic in a biennium. However, the rules do have provisions for receiving a waiver for CE requirements in cases of Hardship and 24 hours of CE are required in a biennium.

More may be found at  
<http://www.ilga.gov/commission/jcar/admincode/068/06801320sections.html>.

Iowa:

The rules appear to be silent as to performing a "limited eye screening."

The rules have a provision under Iowa Rules Chapter 182.3 (2) for the release of contact lens prescription stating: After the contact lenses have been adequately adapted and the patient released from initial follow-up care by the prescribing practitioner, the prescribing practitioner shall, upon request of the patient, provide a copy of the contact lens prescription, at no cost, for the duplication of the original contact lens.

The rules under CE courses received from an alternative delivery method, and CE credit limits per topic, with the exception of Ocular Disease (20 hours per biennium). The rules do specify an exception for a hardship under Iowa's Rule Chapters 645—181.9(154,272C) Continuing education exemption for disability or illness. The board may, in individual cases involving disability or illness, grant exemptions of the minimum continuing education requirements or extension of time within which to fulfill the same or make the required reports. Iowa also accepts courses approved by Cope.

More may be found at:  
<http://www.idph.state.ia.us/licensure/laws.asp?board=opt>.

#### Summary of factual data and analytical methodologies

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

Determination of significant fiscal effect on the private sector:

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

#### Fiscal estimate

The proposed rule will have minimal impact on the department's funds.

#### Effect on small business

These proposed rules are still being reviewed by the department's Small Business Review Advisory Committee to determine the economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats. The Department's Regulatory Review Coordinator may be contacted by email at [christopher.klein@drl.state.wi.us](mailto:christopher.klein@drl.state.wi.us), or by calling (608) 266-8608.

**Agency contact person**

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

Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us).

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

Comments may be submitted to Pamela Haack at the Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 89235, Madison, Wisconsin 53708–8935. Email to [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Comments must be received on or before June 13, 2005 to be included in the record of rule–making proceedings.

**Text of Rule**

SECTION 1. Opt 5.02 (5) is created to read:

Opt 5.02 (5) “Limited eye screening” means an event where no spectacle prescription, contact lens prescription or treatment or management plan is generated.

SECTION 2. Opt 5.08 (2) (d) is created to read:

Opt 5.08 (2) (d) Where a limited eye screening is performed.

SECTION 3. The Note following Opt 5.10 (3) is amended to read:

Note: Federal Trade Commission ~~Rule~~ Rules 16 CFR 315.3 and 16 CFR 456.2 (a) requires require the release of a spectacle prescription ~~but does not require the release of a~~ and contact lens ~~prescription~~ prescriptions. Under s. Opt 5.16, it is unprofessional conduct for an optometrist to fail to release, ~~upon request by a patient and at no cost to the patient, a copy of the patient’s contact lens prescription following release of the patient from contact lens fitting and initial follow–up care.~~

SECTION 4. Opt 5.16 is amended to read:

**Opt 5.16 Contact lens prescription release.** It shall be unprofessional conduct for an optometrist to fail to release, ~~upon request by a patient and at no cost to the patient, a copy of the patient’s contact lens prescription following release of the patient from contact lens fitting and initial follow–up care.~~

SECTION 5. Opt 6.02 (3) is created to read:

Opt 6.02 (3) “Hardship” means serious illness, as determined by a licensed health care provider, or some other personal adversity, as determined by the board.

SECTION 6. The Note following Opt 6.03 (2) is repealed.

SECTION 7. Opt 6.04 (1) is amended to read:

**Opt 6.04 Continuing education.** (1) A certificate holder shall complete 30 hours of approved continuing education ~~relating to diagnosis and management of eye disease or removal of superficial foreign bodies from the eye or from an appendage to the eye in each biennial registration period. Seven~~ A minimum of 7 of the 30 hours ~~must shall~~ be ~~in the~~ diagnosis and management of approved glaucoma education, and 2 of the 30 hours must relate to the responsible use of controlled substances and substance abuse concerns, new drugs used for ophthalmic therapeutic purposes which have been approved by the federal food and drug administration or other topics as designated by the board. Except as provided in sub. (2), approved continuing education hours shall relate to the diagnosis and management of eye disease or the removal of superficial foreign bodies from the eye or from an appendage to the eye.

SECTION 8. The Note following Opt 6.04 (1) is repealed.

SECTION 9. Opt 6.04 (2) is renumbered Opt 6.04 (2m).

SECTION 10. Opt 6.04 (2) is created to read:

Opt 6.04 (2) No more than a combined total of 6 hours of continuing education per biennium may be claimed for course work that relates to one or more of the following subject matter:

- (a) Contact lens.
- (b) Functional vision – pediatrics.
- (c) General optometry.
- (d) Low vision.
- (e) Jurisprudence.
- (f) Practice management.

SECTION 11. Opt 6.04 (6) and (7) are created to read:

Opt 6.04 (6) Except as provided in sub. (7), no more than a combined total of 6 hours of continuing education per biennium may be claimed for course work obtained through alternative delivery methods such as home–study courses, self–study packages, computer courses, televideo conferencing, or other delivery methods approved by the board under s. Opt 6.05 (5).

(7) The board may permit a certificate holder to claim more than 6 hours of continuing education per biennium for course work obtained through alternative delivery methods such as home–study courses, self–study packages, computer courses, televideo conferencing, or other delivery methods approved by the board, if the credential holder submits evidence, satisfactory to the board, of hardship.

SECTION 12. Opt 6.05 (2) (a) and (b) are amended to read:

Opt 6.05 (2) (a) The subject matter of the course pertains to ~~therapeutic pharmaceuticals, removal of superficial foreign bodies from the eye or from an appendage to the eye, responsible use of controlled substances and substance abuse concerns, new drugs used for ophthalmic therapeutic purposes which have been approved by the federal food and drug administration, or other topics as designated by the board~~ the practice of optometry.

(b) The provider of the continuing education course agrees to monitor the attendance and furnish a certificate of attendance to each participant. The certificate of attendance shall certify successful completion of the course.

SECTION 13. Opt 6.05 (4) is repealed.

SECTION 14. Opt 6.05 (6) is renumbered Opt 6.05 (6) (intro.) and is amended to read:

Opt 6.05 (6) (intro.) A continuing education course approved by the ~~council on optometric practitioner education~~ Council on Optometric Practitioner Education (COPE) which satisfies the criteria established under sub. (2), and is included in one of the following categories established by COPE, may shall be approved by the board without receipt of a course approval application from the provider.;

SECTION 15. Opt 6.05 (6) (a) to (o) are created to read:

- Opt 6.05 (6) (a) CL – Contact lens.
- (b) FV – Functional vision – pediatrics.
- (c) G – Glaucoma.
- (d) GO – General optometry.
- (e) JP – Jurisprudence.
- (f) LV – Low vision.
- (g) NO – Neuro–optometry.
- (h) OS – Management of ophthalmic surgery.
- (i) PD – Principles of diagnosis.
- (j) PH – Pharmacology.
- (k) PM – Practice management.
- (L) RS – Refractive surgery management.



- (m) SD – Systemic disease.
- (n) TA – Treatment anterior segment.
- (o) TP – Treatment posterior segment.

SECTION 16. The Note following Opt 6.05 (6) is amended to read:

Note: The Council on Optometric Practitioner Education (COPE) is a committee of the International Association of Boards of Examiners in Optometry, Inc., (IAB). An application for course approval by COPE may be obtained at 4330 East West Highway, Suite 1117, Bethesda, Maryland 20814–4408 1750 South Brentwood Boulevard, Suite 503, St. Louis, MO 63144–1341.

## Notice of Hearing

### Revenue

#### [CR 05–035]

Notice is hereby given that, pursuant to s. 227.11 (2), Stats., and interpreting s. 70.32 (2r) (c), Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the amendment of rules relating to 2005 agricultural use value.

Analysis Prepared by the Department of Revenue

Statutory authority: s. 227.11 (2), Stats.

Statute interpreted: s. 70.32 (2r) (c), Stats.

Explanation of agency authority: Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: s. 70.32 (2r) (c), Stats.

Plain language analysis: Pursuant to s. 70.32 (2r) (c), the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5–year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 5–year average interest rate for a medium–sized, 1–year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three–year lag in determining the 5–year average. Thus, the 2003 use value is based on the 5–year average corn price, cost and yield for the 1996–2000 period, and the capitalization rate is based on the 5–year average interest rate for the 1998–2002 period. The 2005 use value is to be based on the 5–year average corn price, cost and yield for the 1998–2002 period, and the capitalization rate is to be based on the 2000–2004 period.

The data for the 1998–2002 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1998–2002 period will result in negative use values.

Under the proposed rule order, the 2005 average net income per acre of agricultural land is to be based on corn yield, production and price data for the 1996–2000 period and interest and tax rate data for the 1998–2002 period as detailed in the summary of factual data section below.

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states: The valuation of agricultural land in Illinois, Michigan and Minnesota are specified by statute; therefore, there are no administrative rules related to agricultural valuation in these states. The Iowa administrative rule related to agricultural valuation provides no detail regarding the formula used to calculate agricultural land value; reference is made to the Iowa real property appraisal manual.

Summary of factual data and analytical methodologies: Under the proposed rule order, the 2005 average net income per acre of agricultural land is to be based on the following:

- the 5–year average corn yield per acre from 1996 to 2000,
- the 5–year average market corn price per bushel from 1996 to 2000, and
- the 5–year average cost of corn production per bushel from 1996 to 2000.

The rule also specifies that the 2005 use values will be based on a capitalization rate that is the sum of the following:

- the 5–year average interest rate for a medium sized, 1–year adjustable rate mortgage for farm loans for the period from 1998 to 2002, and
- the net property tax rate for each municipality for 2001 taxes, payable 2002.

Analysis and supporting documents used to determine effect on small business: The department has prepared a fiscal estimate regarding this proposed rule order. It was determined that there is not a significant fiscal effect on small business.

#### **Effect on small business**

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

#### **Fiscal estimate**

The proposed rule amending ch. Tax 18 would have the effect of freezing the 2005 assessment of agricultural land at 2003 levels. The proposed permanent rule is identical to the emergency rule promulgated December 29, 2004.

Under the current rule, the 2005 use value of agricultural land would be based on the 5–year average corn price, cost and yield for the 1998–2002 period, and the capitalization rate is based on the 5–year average interest rate for the 2000–2004 period.

Using the data for these periods, it is estimated that agricultural land values would be negative. It is unclear how property with negative values would be taxed.

Under the proposed permanent rule, the 2005 use values are to be based on the same data used to calculate the 2003 use values. As a result, statewide agricultural land values will approximately equal the estimated 2005 value of \$1.95 billion.

Under the proposed permanent rule, local assessors will apply 2003 unit values to calculate 2005 values; however, parcel records and land values will require updates due to new assessment ratios and possible changes in land use.

Under the proposed rule, there will be no loss of state forestry tax revenue. To the extent that the current rule would result in an exemption of agricultural land and therefore a loss of state forestry tax revenue, the proposed rule would result in an increase in \$390,000 in state forestry tax revenues (\$1.95 billion x .0002) relative to current law.

#### **Agency contact person**

Please contact Frank Humphrey at (608) 261–5364 or [frumphre@dor.state.wi.us](mailto:frumphre@dor.state.wi.us), with any questions regarding this proposed rule order.

Place where comments are to be submitted and deadline for submission: Comments are to be sent to the attention of the

above-listed contact person at Department of Revenue, Mail Stop 6-97, 2135 Rimrock Road, P.O. Box 8971, Madison, WI 53708-8971. Comments must be submitted by June 2, 2005.

### Text of Rule

Section 1: Tax 18.07 (1) (b) 6. and 7. and (1) (c) 7. are created to read as follows:

18.07 (1) (b) 6. To avoid negative use values in 2005, the 2005 average gross income per acre for each category of agricultural land shall be calculated as described in subd. 2, except that each category's 5-year average yield per acre shall be based on yield data from 1996 to 2000, and the 5-year average market price per unit of output shall be based on market price data from 1996 to 2000.

7. To avoid negative use values in 2005, the 2005 average total cost of production per acre for each category of agricultural land shall be calculated as described in subd. 3, except that the 5-year average cost of production per acre shall be based on cost data from 1996 to 2000.

18.07 (1) (c) 7. To avoid negative use values in 2005, the 2005 capitalization rate for each municipality shall be calculated as described in subd. 5, except the statewide moving average rate, as described in subd. 4, shall be based on data from 1998 to 2002, and the net tax rate for each municipality shall be based on 2001 taxes, payable 2002.

### Initial Regulatory Flexibility Analysis

The proposed rule will have no adverse impact on small businesses.

### Hearing Information

The hearing will be held at 9:00 A.M. on Thursday, **May 26, 2005**, in the Events Room (1<sup>st</sup> floor) of the State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

#### Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than June 2, 2005, and will be given the same consideration as testimony presented at the hearing.

### Contact Person

Frank Humphrey  
 Department of Revenue  
 Mail Stop 6-97  
 2135 Rimrock Road  
 P.O. Box 8971  
 Madison, WI 53708-8971  
 Telephone (608) 261-5364  
 E-mail fhumphre@dor.state.wi.us

## Notice of Hearing Transportation [CR 05-034]

NOTICE IS HEREBY GIVEN that pursuant to s. 343.10, Stats., and interpreting s. 343.10, Stats., the Department of Transportation will hold a public hearing in **Room 394** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **26th day of May, 2005**, at **1:00 PM**, to consider the amendment of ch. Trans 117,

Wisconsin Administrative Code, relating to CDL occupational licenses.

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

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

### Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 343.10, Stats.

Statutory authority: s. 343.10, Stats.

**Explanation of agency authority:** The Department is authorized to issue occupational licenses under s. 343.10, Stats., to allow a person whose operating privileges are suspended or revoked to engage in an occupation, homemaking or study. Only licenses revoked under Chapter 343, ss. 767.303, 938.34 (14q), 943.21 (3m) or 961.50, Stats., are eligible for an occupational license.

**Related statute or rule:** Chapter 343, ss. 767.303, 938.34 (14q), 943.21 (3m) and 961.50, Stats.

**Plain Language Analysis:** This proposed rules modifies ch. Trans 117, relating to occupational licenses. The Motor Carrier Safety Improvement Act of 1999 (MCSIA) forbids states from knowingly issuing a temporary license permitting a person to drive a commercial motor vehicle (CMV) while their driving privileges are revoked, suspended or cancelled, per CFR 384.210. Following federal requirements, the legislature eliminated statutory authority for CDL occupational licenses, effective September 30, 2005, by amendment to s. 343.10 (2) (c), Stats., 2003 Wis. Act 33. These amendments to ch. Trans 117 as required by the statutory change, remove all of the references to commercial occupational driver's licenses in the Department's occupational licensing rule.

References to s. 346.65 (6), Stats., throughout the chapter are no longer correct. The language allowing the courts authority to order an ignition interlock device is now found in s. 343.301 (1), Stats. The relevant provisions of ch. Trans 117 are proposed to be amended accordingly. The rule also makes clear that any statutorily-mandated restriction will be imposed on any occupational license.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: As of September 30, 2005, federal law prohibits states from issuing an occupational license to operate a commercial motor vehicle. (49 CFR 384.210) 2003 Wis. Act 33 and this rule making bring Wisconsin into compliance with that requirement.

**Comparison with Rules in Adjacent States:** As of September 30, 2005 all states are prohibited from issuing an occupational license to operate a commercial motor vehicle. (49 CFR 384.210). This includes all adjacent states. Thus, Wisconsin law will be identical to all other states on this point. No state will issue CDL occupational licenses.

**Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen:** The Department will not issue occupational licenses to operate a commercial motor vehicle after September 30, 2005 (s. 343.10 (2) (c), as amended by 2003 Wis. Act 33). Failure to comply would result in the loss of federal highway funding.

**Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses:** This proposed rule could impact small businesses that employ commercial drivers. Any commercial driver who loses his or her driving

privileges may be eligible for a Class D occupational license, however, they will not be able operate a commercial motor vehicle. In 2004, the Department issued 1,088 occupational licenses for commercial drivers. None of these drivers can be issued or hold an occupational license after September 30, 2005.

If a driver cannot operate a commercial motor vehicle, and it is part of their job duties to do so, the employee must be reassigned to duties that do not require the operation of a commercial motor vehicle. As an alternative, the small business may choose to terminate the employee for being unable to perform his or her job duties and hire someone else with a valid commercial driver's license.

The Department will enforce the rule by not issuing occupational licenses to operate commercial motor vehicles after September 30, 2005.

**Agency contact person:** You may contact the Department's small business regulatory coordinator by phone at (608) 267-3703, or via e-mail at the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

**Fiscal Effect and Anticipated Costs Incurred by Private Sector:** Small businesses might be adversely affected if the number of qualified, available drivers under MCSIA is reduced. Employers may find that they have to pay drivers a premium wage in order to continue to provide their current level of service.

The National Compensation Survey of Milwaukee-Racine, conducted in October 2003, found that

transportation and material moving employees (includes truck drivers and industrial truck and tractor equipment operators) earned an average of \$18.00 per hour. If 10% premium were applied to retain qualified, available drivers under MCSIA, this would cost a small business an additional \$3744 per year.  $\$18.00 * 10\% = \$1.80 * 2080 \text{ hours} = \$3744$

The predicted fiscal impacts of the federal regulation, which imposed these new requirements upon states, were published in the Federal Register at Volume 67, No. 147, July 31, 2002, p. 49472. This federal register is available online at:

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002\\_register&docid=02-18457-filed.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-18457-filed.pdf)

**Place Where Comments are to be Submitted and Deadline for Submission:** The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Erin Egan, Department of Transportation, Division of Motor Vehicles, Bureau of Driver Services, Room 351 Hill Farms, P.O. Box 7920, Madison WI 53707-7920. You may also contact Ms. Egan by phone at (608) 266-1449.

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



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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.*

### **Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board**

**(CR 04-118)**

Ch. A-E 6, relating to the names of examinations for land surveyors.

### **Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board**

**(CR 04-119)**

Ch. A-E 4, relating to the barrier free design parts of the board's examinations for professional engineers.

### **Commerce**

**(CR 05-011)**

Ch. Comm 5, relating to welder, electrician and plumber credentials.

### **Commerce**

**(CR 04-072)**

Ch. Comm 91, relating to equal speed of access to toilets at facilities where the public congregates.

### **Dietitians Affiliated Credentialing Board**

**(CR 05-021)**

Chs. DI 2 and 3, relating to filing applications for temporary certificates and examinations.

### **Transportation**

**(CR 05-019)**

Ch. Trans 28, relating to expanding eligibility for Harbor Assistance Program grants to private owners of harbor facilities.

### **Transportation**

**(CR 05-024)**

Ch. Trans 196, relating to the convenience fee for telephone vehicle registration renewal.

### **Workforce Development**

**(CR 04-123)**

Chs. DWD 12 and 56, relating to public assistance overpayment collection.

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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.state.wi.us or (608) 266–7275 for updated information on the effective dates for the listed rule orders.*

### **Agriculture, Trade and Consumer Protection (CR 04–096)**

An order affecting ch. ATCP 75, relating to retail food establishments.

Effective 6–1–05.

### **Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board (CR 03–087)**

An order affecting ch. A–E 4, relating to application contents for professional engineers.

Effective 6–1–05.

### **Commerce (CR 04–134)**

An order affecting chs. Comm 5, 96 to 98, relating to manufactured home dealer and salesperson licenses.

Effective 7–1–05.

### **Commerce (CR 04–108)**

An order affecting ch. Comm 129, relating to technology commercialization programs.

Effective 7–1–05.

### **Employment Relations (CR 04–139)**

An order affecting chs. ER 1, 3, 4, 8, 10, 18, 29, 34 and 44, relating to the references to the Compensation Plan, day care providers, the Entry Professional Program, paid leave to vote, continuous service, reinstatement, sick leave credit restoration, annual leave schedules, annual leave options, personal holidays, catastrophic leave, paid leave for bone marrow or organ donation, project compensation, hiring above the minimum and supervisor training.

Effective 7–1–05.

### **Employment Relations – Merit, Recruitment and Selection (CR 04–138)**

An order affecting chs. ER–MRS 1, 8, 12, 14, 15, 16, 17, 22, 24, 27, 32 and 34, relating to the Entry Professional Program, submission of notices and requests to the administrator, promotional appointments and pay, involuntary transfers, periods of eligibility for reinstatement, the definition of “state property”, acting assignments and obsolete references, correct

cross–references, clarifying language and other minor, technical changes.

Effective 7–1–05.

### **Financial Institutions – Banking (CR 05–012)**

An order affecting chs. DFI–Bkg 40, 41, 42, 44 and 45, relating to definitions, applicability requirements, registrations, annual audits and reports, trust accounts, ethical and competent practice, education, examination, brokerage agreements and consumer disclosures.

Effective 7–1–05.

### **Health and Family Services (CR 04–093)**

An order affecting ch. HFS 196 and Appendix, relating to restaurants and the Wisconsin Food Code.

Effective 7–1–05.

### **Insurance (CR 04–131)**

An order affecting ch. Ins 5, relating to administrative hearing procedures.

Effective 7–1–05.

### **Insurance (CR 04–133)**

An order affecting ch. Ins 14, relating to vehicle protection product warranties.

Effective 7–1–05.

### **Public Instruction (CR 04–129)**

An order affecting ch. PI 24, relating to the payment of state aid under the student achievement guarantee in education (SAGE) program.

Effective 7–1–05.

### **Transportation (CR 04–141)**

An order affecting ch. Trans 102, relating to military vehicle operator CDL exemption.

Effective 6–1–05.

### **Transportation (CR 05–003)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Effective 6–1–05.

**Transportation**  
**(CR 05-006)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Effective 6-1-05.

**Veterans Affairs**  
**(CR 05-002)**

An order affecting ch. VA 13, relating to the veterans

assistance program.  
Effective 6-1-05.

**Veterans Affairs**  
**(CR 05-008)**

An order affecting ch. VA 4 and 12, relating to the home improvement loan program and the personal loan program.

Effective 6-1-05.

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