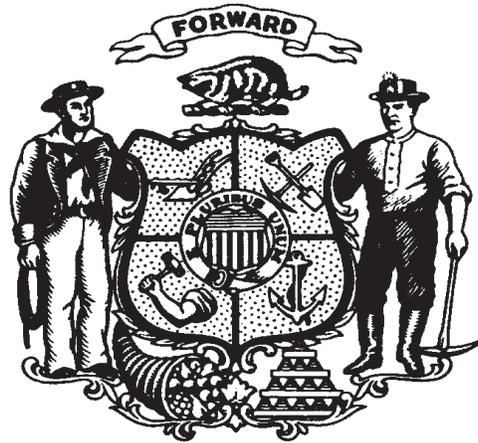


Wisconsin Administrative Register

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Emergency rules now in effect

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

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

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

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

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

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

Commerce

A rule adopted creating **s. Comm 2.33 (5)**, relating to manufactured home certificate of title fees.

Exemption From Finding of Emergency

Section 76 (2) of 2005 Wisconsin Act 45 permits the Department of Commerce to promulgate rules required under sections 101.9205 (3), 101.9208 and 101.9213 (8), Stats., as amended by 2005 Wisconsin Act 45, by using the emergency rulemaking procedure under section 227.24, Stats., except that the department is not required to provide evidence that the emergency rule is necessary for the preservation of public peace, health, safety or welfare and is not required to provide a finding of emergency.

The current statutes establish specific minimum fees that the department must charge for conducting a file search, for providing various services related to the titling of manufactured homes, and for providing certain notices related to security interests in manufactured homes. 2005 Wisconsin Act 45 removes those fees, effective December 1, 2005, from the statutes and requires the department to establish, by rule, the fees for those services. The emergency rule establishes the required fees in the department's fee schedule, chapter Comm 2, without any changes in the fees that have been charged under the current statutes.

The Act also requires the department to assess a new fee to fund a manufactured housing rehabilitation and recycling grant program. The emergency rule establishes that fee to be

approximately the same as the environmental impact fee that is no longer assessed.

| | |
|--------------------------|---|
| Publication Date: | November 29, 2005 |
| Effective Date: | December 1, 2005 |
| Expiration Date: | See section 76 (2) 2005 Wis. Act 45. |
| Hearing Date: | January 6, 2006 |

Elections Board

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

Finding of Emergency

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

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

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

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

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

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

Insurance

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

Finding of emergency

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

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

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

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

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

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

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules that govern the managed forest law. The state legislature has delegated the appropriate agencies rule-making authority to administer the managed forest law. State statute governing the managed forest law was amended on July 25, 2005 with an initial applicability date of June 1, 2005. This order is designed to bring the administrative code into conformity with the state statutes that govern the managed forest law. Normal rule-making procedures will not allow the establishment of changes necessary to continue processing petitions for managed forest law received from June 1, 2005 to July 1, 2005 (petition deadline). Failure to process these petitions will result in a delay in designation of these lands as managed forest land and a failure to meet statutory deadlines for designation.

Publication Date: October 4, 2005
Effective Date: October 4, 2005
Expiration Date: March 3, 2006
Hearing Date: October 19, 2005

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

Finding of Emergency

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

Publication Date: October 3, 2005
Effective Date: October 3, 2005
Expiration Date: March 2, 2006
Hearing Date: October 12, 2005

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

Finding of emergency

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

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

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

Finding of Emergency

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

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

Natural Resources

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Revenue (2)

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

Finding of emergency

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

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

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

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

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

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

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

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

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

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

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

Technical College System Board

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

Finding of emergency

The Wisconsin Technical College System Board finds that an emergency exists and that a rule is necessary for the

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

The 2005 Wis. Act 25 (the 2005–2007 biennial budget bill) created the training program grants under Wis. Stats. §§ 20.292 (1) (eh) and 38.41. An annual appropriation of \$1,000,000 GPR in was established. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state's economic vitality and health.

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

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

Transportation

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

Finding of emergency

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

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

Veterans Affairs (2)

1. Rules adopted repealing s. **VA 2.04** and repealing and recreating s. **VA 2.02**, relating to the veterans tuition reimbursement program.

Exemption From Finding of emergency

The legislature has authorized the department to promulgate rules for the administration of the veterans tuition reimbursement program under the emergency rule procedure without providing evidence of the necessity of the preservation of the public peace, health, safety, or welfare at sec. 9153 (1) of 2005 Wis Act 25.

Publication Date: August 2, 2005
Effective Date: August 2, 2005
Expiration Date: December 30, 2005
Hearing Date: October 21, 2005
Extension Through: February 27, 2006

2. Rules adopted repealing and recreating s. **VA 2.01**, relating to the assistance to needy veterans program.

Exemption From Finding of emergency

The legislature has authorized the department to promulgate rules for the administration of the assistance to needy veterans program under the emergency rule procedure without providing evidence of the necessity of the preservation of the public peace, health, safety, or welfare at sec. 9135 (3k) of 2005 Wis Act 25.

Publication Date: August 2, 2005
Effective Date: August 2, 2005
Expiration Date: December 30, 2005
Hearing Date: October 21, 2005
Extension Through: February 27, 2006

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

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

Finding of emergency

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

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

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

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

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

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

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

This order also repeals and recreates the applicability of the chapter section and the overtime section to write these rules

in a clearer format. There is no substantive change in these sections.

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

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

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

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

Finding of emergency

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

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

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

Scope statements

Health and Family Services

Subject

The Wisconsin Department of Health and Family Services (Department) proposes to repeal and recreate ch. HFS 149, rules relating to the selection and monitoring of vendors for the special supplemental nutrition program for women, infants and children (WIC).

Policy analysis

Under the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the federal government provides supplemental foods and nutrition education through payment of cash grants to states that administer the program through local agencies at no cost to eligible persons. The WIC program serves as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems. In Wisconsin, the WIC program has approximately 112,000 certified participants, comprised of low-income pregnant and breastfeeding women, infants and children under 5 years of age. Seventy-one local WIC projects (located in city and county public health departments, private non-profit organizations, and one hospital) administer WIC in designated project service areas. These services include health screening, nutrition assessment and counseling, referrals to other health and social services, and vouchers to purchase nutritious foods at authorized grocery stores and pharmacies (vendors). The Wisconsin WIC program operates under State Plan requirements pursuant to 7 CFR 246 and is responsible for the authorization of some 1,000 vendors to provide food to WIC participants.

Chapter HFS 149 was created in 1986, to establish conditions under which the Department authorizes grocery stores and pharmacies to be vendors for the special supplemental nutrition program for the WIC program. Chapter HFS 149 currently addresses vendor authorization, rights and responsibilities and site visits, actions that constitute vendor failure to comply with program requirements, waivers and appeal procedures. Chapter HFS 149 has remained largely unchanged since 1986, except for an amendment relating to the creation of vendor peer groups in early 2006.

Changes to both the controlling state statute, federal statutes, and federal regulations over the past few years require the Department to revise ch. HFS 149. By incorporating and reconciling pertinent provisions from s. 253.06, Stats., 7 CFR 246, and Interim Rule "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Vendor Cost Containment" that is effective December 29, 2005, the Department hopes to make ch. HFS 149 a more accurate and useful source of provisions for the Department, vendors, and WIC participants. The revisions will also assure more equitable treatment of authorized stores, while improving the integrity of the program. Pursuant to the Department's authority under s. 253.06, Stats., and requirements of 7 CFR 246, and the interim rule, the Department intends to propose the following changes to ch. HFS 149:

1. Add vendor "business integrity" provisions that may include provisions concerning fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice, in addition to other types of convictions or civil judgments identified by the Department.

2. Allow immediate authorization of vendors in certain circumstances.

3. Allow vendors who fail an initial site visit to submit a correction notice and be granted a second site visit within six months without having to submit a new application.

4. Significantly modify and expand vendor enforcement provisions, which may include the addition of several new offenses; changes in the length of disqualification periods; reciprocal food stamp program disqualification; and the addition of forfeitures that may be imposed on a vendor in place of disqualification; and allow the Department to summarily suspend a vendor from the WIC program without a prior hearing if the vendor provided cash or nonfood items in exchange for drafts, has been convicted of a criminal offense in any activity substantially related to providing or claiming reimbursement for services under the food stamp program, any other food and nutrition service program operated by the USDA or who has a history of disqualification or noncompliance with any of these programs.

Entities affected by the rule

The entities that will be directly affected by the proposed rules include Wisconsin grocery stores and pharmacies that apply for initial authorization in WIC, and all WIC authorized stores. Some warehouses that supply food to WIC-authorized stores may be affected if they are not authorized by the state WIC program to sell infant formula to WIC stores. WIC participants that abuse the WIC program will also be affected.

Comparison with federal requirements

The Wisconsin WIC Program operates under requirements set forth in 7 CFR 246: Special Supplemental Nutrition Program for Women, Infants and Children (WIC). An interim rule that amends the regulations to strengthen vendor cost containment is effective December 29, 2005. 7 CFR 246 and the interim rule include legislative requirements that affect the selection, authorization, and reimbursement of retail vendors; and provide a basis for taking action against vendors, participants, and persons serving as proxies for participants who are abusing or defrauding the WIC Program. A revision to HFS 149 is necessary in order to address requirements in 7 CFR 246 and the interim rule.

Statutory authority

The Department's authority to repeal and recreate these rules is found in ss. 46.016, 227.11 (2) (a) and 253.06 (5) (a), Stats.

Staff time required

The Department estimates it will take 100 hours of staff time to develop the proposed rules. The Department will also use an advisory committee that consists of members of the public most affected by the proposed rules to participate in drafting the proposed rules.

Revenue

Subject

S. Tax 8.63, relating to liquor wholesaler warehouse facilities.

Objective of the rule. The objectives of the proposed rule are to establish minimum requirements for warehouse facilities on premises described in liquor wholesalers' permits issued by the Department under s. 125.54, Stats., and for periodic site inspections by the Department of such warehouse facilities.

Policy analysis

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes and court decisions. If the rules are not changed, they will be

incorrect in that they will not reflect current law or current Department policy.

Entities affected by the rule

Those applying for or holding a liquor wholesalers' permit under s. 125.54, Stats., and those liquor wholesalers applying for a warehouse permit under s. 125.19, Stats.

Comparison with federal requirements

The department is not aware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Statutory authority

125.54 (7) (d), Stats.

Staff time required

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

Submittal of rules to legislative council clearinghouse

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

Barbering and Cosmetology Examining Board

Rule Submittal Date

On December 16, 2005, the Barbering and Cosmetology Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule–making order relates to definitions, microdermabrasion, chemical skin peels, managers, ear piercing, waxing, nail enhancement, licensing requirements and reinstatement of license.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 6, 2006, at 9:45 a.m. in Rooms 121AB, at 1400 East Washington Avenue, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Information

Pamela Haack, Paralegal, Office of Administrative Rules, (608) 266–0495.

Pamela.haack@drl.state.wi.us

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

Rule Submittal Date

On December 21, 2005, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), 457.03 (1) and 457.22 (1) (c), Stats.

The proposed rule–making order relates to continuing education credits for professional counselors.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 31, 2006 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

Pamela Haack, Paralegal, Office of Administrative Rules, (608) 266–0495.

Pamela.haack@drl.state.wi.us

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

Rule Submittal Date

On December 21, 2005, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), 457.03 (1) and 457.22 (1) (a), Stats.

The proposed rule–making order relates to continuing education credits for social workers.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 1, 2006 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

Pamela Haack, Paralegal, Office of Legal Counsel, (608) 266–0495.

Pamela.haack@drl.state.wi.us

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

Rule Submittal Date

On December 21, 2005, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), 457.03 (1) and 457.22 (1) (b), Stats.

The proposed rule–making order relates to continuing education credits for marriage and family therapists.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 30, 2006 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

Pamela Haack, Paralegal, Office of Administrative Rules, (608) 266–0495.

Pamela.haack@drl.state.wi.us

Rule-making notices

Notice of Hearing

Barbering and Cosmetology Examining Board

[CR 05-118]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Barbering and Cosmetology Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting ss. 454.02, 454.04, 454.06, 454.08 and 454.13, Stats., the Barbering and Cosmetology Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal ss. BC 1.01 (1m) and 4.09 (3m); to renumber ss. BC 1.01 (6h), (6r), (11) and (11m); to renumber and amend BC 2.025 (2) (c), 4.08 (intro.), (1), (2) and (3), 6.04 (1) and 8.01; to amend BC 1.01 (3), (3r) and (8), 2.025 (2) (b) and (3), 2.06 (5), 2.07 (1g), 3.01 (7), 3.02 (1) (a) to (c), 3.06 (2), 4.01 (2), 4.02 (1), 4.03 (2), 4.06 (3), 4.07 (intro.) and (2), Figure 5.02, Figure 5.06, Figure 6.03 (1), Figure 6.04 (3), ch. BC 8 (title) and 9.02; and to create BC 1.01 (6s), (7m), (9), (11n), (11r), (11w) and (13t), 2.025 (2) (c) 1. and 2., (2m) and (6), 4.01 (8), 4.08 (1) and (2), 6.04 (1) (b) and 8.01, relating to definitions, microdermabrasion, chemical skin peels, managers, ear piercing, waxing, nail enhancement, licensing requirements and reinstatement of license.

Hearing Date, Time and Location

Date: February 6, 2006

Time: 9:45 a.m.

Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Rooms 121A & B
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 February 20, 2006, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes interpreted: Sections 454.02, 454.04, 454.06, 454.08 and 454.13, Stats.

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

Explanation of agency authority: The Barbering and Cosmetology Examining Board has the authority to promulgate rules under sections 15.08 (5) (b) and 227.11 (2), Stats., relating to limitations and exceptions, practice, licensure, establishment licenses, and licensees of other jurisdictions.

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

Plain language analysis: This proposed rule-making order encompasses several changes. A number of the changes are definitions and technical changes to make the rules easier to read and understand (Sections 1, 2, 3, 4, 8, 19, 25, 26, 28, 30, 31, 32 and 33). A significant revision is allowing microdermabrasion to be practiced, in specific circumstances, without the supervision of a physician (Sections 11, 12, 13, 14 and 16). This proposed rule-making order also modifies the rules regarding managers, their responsibilities and the amount of supervision they must provide (Sections 17, 18, 20, 34, 35 and 36). This proposed rule-making order also clarifies some language regarding sanitation procedures providing additional guidance to the practitioners. And, finally, the proposed rule-making order also clarifies licensing requirements that were previously ambiguous.

SECTION 1 repeals the definition of artificial nails which is now subsumed by the addition in s. BC 1.01 (11w), definition of "nail enhancement."

SECTION 2 modifies the definitions of "contagious" and "cutting" to more accurately reflect the meaning.

SECTION 3 moves language to a more appropriate location.

SECTION 4 adds a definition of "exfoliation."

SECTION 5 adds a definition of general supervision to provide guidance to the licensee and the physician who wish to collaborate in the providing of certain services.

SECTION 6 clarifies the definition of "infectious" to show that contact is not a necessary element to the spread of infectious disease.

SECTION 7 provides a definition of "laser" necessary to understand the restrictions on laser hair removal services.

SECTION 8 changes the placement of definitions to a more appropriate location.

SECTION 9 adds new definitions of "mechanical exfoliation," "microdermabrasion" and "nail enhancement."

SECTION 10 adds a new definition of "physician."

SECTION 11 creates an exception to the requirement of medical supervision of microdermabrasion services.

SECTIONS 12 and 13 clarify that some commercially available exfoliation products can be administered without medical supervision.

SECTION 14 creates and identifies the circumstances that must exist to allow microdermabrasion services in absence of medical supervision. The requirements include appropriate training, restrictions on the type of machine allowed, and a requirement for a pretreatment screening of the client to determine suitability for the procedure. This SECTION also mandates a written consent from the client after disclosure of known risks.

SECTION 15 imposes a requirement of parenteral or guardian consent for laser hair removal services on minors.

SECTION 16 imposes a requirement that in licensed establishments where laser hair removal, microdermabrasion or chemical skin peels are performed as a delegated medical act, information on the delegating physician must be conspicuously posted.

SECTION 17 allows for supervision of apprentices and temporary permittees by a licensee with substantial experience.

SECTION 18 sets the minimum level of experience necessary for a practitioner other than a manager to be able to supervise apprentices at 2,000 hours and requires a written designation of that responsibility.

SECTIONS 19 and 26 clarify that the proper cleaning of linens includes use of a germicide.

SECTION 20 amends the rules to clarify that chain salons need to have full time managers for each salon and recognizes that a manager may be absent for brief periods of time during a day.

SECTION 21 deletes the requirement that a floor plan be submitted to the department when a leased chair or booth is relocated but maintains the requirement of notice to the department of that relocation.

SECTION 22 clarifies that waterless hand washing agents must meet certain standards and may only be used as a substitute for washing with soap and water when the hands are not visibly soiled.

SECTION 23 provides guidance on the appropriate use of lancets for lateral piercing of whiteheads.

SECTION 24 notes that the rules regarding disinfecting tweezers used in electrolysis are different than for general cosmetology.

SECTION 25 adds a requirement that proper maintenance of sterilizers includes following manufacturers recommendations regarding maintenance procedures.

SECTION 27 acknowledges that ear piercing may be performed by licensees and allows use of waterless alcohol base washing agents as a substitute for soap and water.

SECTION 28 clarifies that use of a topical antiseptic is required before performing a waxing procedure.

SECTION 29 establishes waxing as part of the scope of practice for properly trained electrologists and manicurists. This SECTION establishes the training standards for those licensees seeking to provide waxing services.

SECTION 30 eliminates language that is redundant as a result of the adoption of SECTION 23 above.

SECTIONS 31, 32 and 33 modify the training standards to reflect the addition of the concept of nail enhancements as a practice skill.

SECTION 34 eliminates a restriction that apprentices work only under the supervision of a manager making the language consistent with SECTION 18, which allows supervision by a properly designated practitioner with at least 2,000 hours of experience.

SECTION 35 adds a provision for temporary absence of a manager and allowing temporary supervision of apprentices by a qualified and designated practitioner.

SECTION 36 modifies the training standards for apprentices to acknowledge nail enhancements as a practice skill.

SECTION 37 modifies the title of the chapter to recognize that the chapter deals with all licenses and eliminates language suggesting the chapter only addresses licensees from other jurisdictions.

SECTION 38 clarifies the title of the chapter to show that it addresses license applications for which an examination is not needed and relocates the SECTION to a more appropriate location.

SECTION 39 repeats the basic statutory licensing requirements in a rule.

SECTION 40 creates a provision for renewal of licensure by licensees who are currently practicing out of state.

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

The federal government does not regulate barbers and cosmetologists, and a search of the United States Code Services (USCS) and the Code of Federal Regulations (CFR) returned no entries for microdermabrasion, chemical peels, waxing, managers, artificial nails, or nail technology for barbers or cosmetologists.

Anticipated costs incurred by private sector

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

Fiscal estimate

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

Effect on small business

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

Agency contact person

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

Place where comments are to be submitted and deadline for submission

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before February 20, 2006 to be included in the record of rule-making proceedings.

Notice of Hearing

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

[CR 05-120]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in ss. 15.08 (5) (b), 227.11 (2), 457.03 (1) and 457.22 (1) (a), Stats., and interpreting s. 457.08, Stats., the Social Worker Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to create repeal s. MPSW 8.03 (2) (f); to amend ss. MPSW 8.02 (1) and 8.03 (2) (e); and to create s. MPSW 8.03 (1m) (d) to (f), relating to continuing education credits for social workers.

Hearing Date, Time and Location

Date: February 1, 2006
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 February 13, 2006, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes interpreted: Section 457.08, Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2), 457.03 (1) and 457.22 (1) (a), Stats.

Explanation of agency authority: Chapter MPSW 8 sets forth the requirements for obtaining continuing education for social workers. Each biennium social workers are required to obtain a minimum of 30 continuing education credits, which may be taken in different subject areas, provided the coursework is sponsored by acceptable organizations or entities. Additionally, credit limitations exist, depending on the particular type of continuing education program or presentation. This amendment is intended to expand the scope of acceptable continuing education organizations, including, for instance, the American Medical Association, the American Psychological Association, and the American Osteopathic Organization. It also permits credit for continuing education programs that are recognized by the Professional Counseling Section and by the Marriage and Family Therapist Section. This amendment also modifies the credits one can obtain for interactive internet courses and self-study courses, limiting the combined total to 21 credits, with maximums of 10 credits for self-study courses and 16 credits for internet courses. However, self-study courses are not permitted to be used for satisfying the social work ethics requirement.

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

Plain language analysis: Under existing rules for continuing education programs, there is a lack of uniformity among the Marriage and Family Therapists, Professional Counselors and Social Worker Sections with respect to continuing education, including the criteria and acceptance of various programs. Current rules do not allow credential holders access to continuing education courses offered to marriage and family therapists or professional counselors. Additionally, credential holders may not receive continuing education credit for teaching, publishing or presenting. Finally, under current rules, credential holders are not able to take courses approved or sponsored by the American Psychology Association.

The modification to this rule will permit continuing education credits to be granted for additional items, including, but not limited to, teaching academic courses, publishing professional books, and presenting at national conferences, all of which may require substantial preparation and/or research related to the knowledge and practice of social work. Additionally, this modification will permit continuing education credit to be granted to those credential holders who take courses approved by the Marriage and Family Therapists Section or by the Professional Counselors Section. Finally, the proposed rule will allow credential holders to take courses approved or sponsored by the American Psychology

Association. Access to these courses will provide a substantial benefit to the practice of social work.

SECTION 1 amends MPSW 8.02 (1) by changing the credentialing period date from July 1 to March 1 pursuant to s. 457.20 (2), Stats.

SECTION 2 creates MPSW 8.03 (1m) (d) to (f) and provides that any continuing education program approved, sponsored or co-sponsored by a presenter approved by the committee for the approval of continuing education sponsors of the American Psychological Association is acceptable. It further provides that any educational programs recognized as approved at the time of attendance as "Category I" continuing education programs by the Council on Medical Education of the American Medical Association or the American Osteopathic Association are acceptable. Finally, it provides that any educational programs recognized by the Marriage and Family Therapist Section and the Professional Counselor Section are acceptable.

SECTION 3 amends MPSW 8.03 (2) (e) by providing interactive internet learning courses offered by an accredited university or preapproved by the ASWB: 1 CEH per .1 CEU of instruction, or self-study courses approved by accredited college or university schools of social work, local or national professional social work organizations, or the association of social work boards, 1 CEH per credit completed, but no more than 21 total CEHs for interactive internet courses and self-study courses will be accepted in any 2 year credentialing period with a maximum of 10 CEHs for self-study courses and a maximum of 16 CEHs for internet courses. Self-study courses shall not be used to satisfy the social work ethics requirement.

SECTION 4 repeals MPSW 8.03 (2) (f).

Fiscal Estimate

The Department of Regulation and Licensing will incur the equivalent of \$1,913 costs in staff time to audit the continuing education requirements.

Anticipated costs incurred by private sector

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

Effect on small business:

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

Agency contact person

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

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935.

Email: pamela.haack@drl.state.wi.us. Comments must be received on or before February 13, 2006, to be included in the record of rule-making proceedings.

Notice of Hearing
Marriage and Family Therapy, Professional
Counseling and Social Work Examining
Board
[CR 05-119]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in ss. 15.08 (5) (b), 227.11 (2), 457.03 (1) and 457.22 (1) (c), Stats., and interpreting s. 457.22 (1) (c), Stats., the Professional Counselor Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to create ss. MPSW 14.03 (4m) and 14.04 (6) to (9), relating to continuing education credits for professional counselors.

Hearing Date, Time and Location

Date: January 31, 2006
Time: 1:15 p.m.
Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson Street)
 Room 121A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by February 10, 2006, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes interpreted: Section 457.22 (1) (c), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2), 457.03 (1) and 457.22 (1) (c) Stats.

Explanation of agency authority

Chapter MPSW 14 sets forth the requirements for obtaining continuing education for professional counselors. Each biennium professional counselors are required to obtain a minimum of 30 continuing education credits, provided the coursework is sponsored by acceptable organizations or entities. However, there is no specific requirement as to what type or category of continuing education they must take. This amendment would require licensees to have a minimum of 15 credits in certain categories and would further require that at least 4 of those 15 credits be in the subject of professional counseling therapy ethics and boundaries. In addition, this amendment expands the scope of acceptable continuing education organizations, including, for instance, the American Medical Association, the American Psychological Association, and the American Osteopathic Organization. It also permits credit for continuing education programs that are recognized by the Marriage and Family Therapist Section and the Social Worker Section. Furthermore, it increases the type of credits that will be given for continuing education including, for instance, formal presentations at professional seminars, educational sessions at state and national

conferences, interactive internet courses, and authorship in various publications.

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

Plain language analysis: Under the existing rules for continuing education programs, there is a lack of uniformity among the Marriage and Family Therapists Section, the Professional Counselors Section, and the Social Worker Section, with respect to continuing education, including the criteria and acceptance of various programs. Current rules do not allow credential holders access to continuing education courses offered to marriage and family therapists or social workers. Additionally, credential holders may not receive continuing education credit for teaching, publishing or presenting. Finally, under current rules, credential holders are not able to take courses approved or sponsored by the American Psychology Association.

This proposed rule-making order will permit continuing education credits to be granted for additional items, including but not limited to, teaching academic courses, publishing professional books, and presenting at national conferences, all of which may require substantial preparation and/or research related to the knowledge and practice of professional counseling. Additionally, this amendment will permit continuing education credit to be granted to those credential holders who take courses approved by the Marriage and Family Therapist Section and the Social Worker Section. And, the proposed rule will allow credential holders to take courses approved or sponsored by the American Psychology Association. Access to these courses will provide a substantial benefit to the practice of professional counseling.

SECTION 1 creates s. MPSW 14.03 (4m) which requires licensees to take a minimum of 15 credits in approved professional counseling continuing education programs and other educational activities. Four of the 15 credits shall be in the subject area of professional counseling ethics and boundaries.

SECTION 2 creates s. MPSW 14.04 (6) to (9) to provide that any continuing education program approved, sponsored or co-sponsored by a presenter approved by the Committee for the Approval of Continuing Education Sponsors of the American Psychological Association will be acceptable. It also provides that any educational programs recognized as approved at the time of attendance as "Category I" continuing medical education programs by the Council on Medical Education of the American Medical Association or the American Osteopathic Association is acceptable. Additionally, any educational programs recognized by the Social Worker Section and the Marriage and Family Therapist Section are acceptable. Finally, if approved or recognized by one of the approved providers, credit will also be granted for the following: Formal presentations of relevant professional material at seminars, workshops, programs or institutes, which may include formal presentation and directed discussion of videotaped material: 2 CEHs per hour of continuing education for presenters, but no additional CEHs shall be granted for subsequent presentations of the same material; University, college or vocational technical adult education courses, which may include formal presentation and directed discussion of videotaped instruction: 20 CEHs per semester hour or 13.2 CEHs per quarter hour for instructors, but no additional CEHs shall be granted for subsequent presentations of the same material; Educational sessions at state and national conferences: 2 CEHs per hour of continuing education for presenters, but no additional CEHs shall be granted for subsequent presentations of the same material; Educational telephone network (ETN) courses: 2 CEHs per hour of continuing education for presenters, but no additional CEHs shall be granted for

subsequent presentations of the same material; Interactive internet courses: 2 CEHs per hour of continuing education for instructors, but no additional CEHs shall be granted for subsequent presentations of the same material; Authorship of a published chapter in a textbook or professional recourse book, or a professional journal article: 8 CEHs; Development of alternative media, computer software, videotapes, or audiotapes: 8 CEHs.

Summary of factual data and analytical methodologies: The Professional Counselor Section, in accordance with the Marriage and Family Therapist Section as well as the Social Worker Section are amending their rules based on the sections' collective experience and understanding that continuing education available to one section may be of professional benefit to the other sections.

Fiscal Estimate

The Department of Regulation and Licensing will incur the equivalent of \$1,913 costs in staff time to audit the continuing education requirements.

Anticipated costs incurred by private sector:

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

Effect on small business:

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

Agency contact person:

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

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Email pamela.haack@drl.state.wi.us. Comments must be received on or before February 10, 2006, to be included in the record of rule-making proceedings.

Notice of Hearing

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

[CR 05-122]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in ss. 15.08 (5) (b), 227.11 (2), 457.03 (1) and 457.22 (1) (b), Stats., and interpreting ss. 457.10 (3), 457.11 and 457.14, Stats., the Marriage and Family Therapist Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. MPSW 19.02 (4); and to create ss. MPSW 19.01 (4m) and 19.02 (5), (6), (7), (8) (intro.) and (a) to (g), relating to continuing education credits for marriage and family therapists.

Hearing Date, Time and Location

Date: January 30, 2006
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 February 10, 2006, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes interpreted: Sections 457.10 (3), 457.11 and 457.14, Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2), 457.03 (1) and 457.22 (1) (b), Stats.

Explanation of agency authority: Chapter MPSW 19 sets forth the requirements for obtaining continuing education for marriage and family therapists. Each biennium marriage and family therapists are required to obtain a minimum of 30 continuing education credits, provided the coursework is sponsored by acceptable organizations or entities. However, there is no specific requirement as to what type or category of continuing education they must take. This proposed rule-making would require licensees to have a minimum of 15 credits in certain categories and would further require that at least 4 of those 15 credits be in the subject of marriage and family therapy ethics and boundaries. In addition, this amendment expands the scope of acceptable continuing education organizations, including, for instance, the American Medical Association, the American Psychological Association, and the American Osteopathic Organization. It also permits credit for continuing education programs that are recognized by the Professional Counselor Section and by the Social Worker Section. Furthermore, it increases the type of credits that will be given for continuing education including, for instance, formal presentations at professional seminars, educational sessions at state and national conferences, interactive internet courses, and authorship in various publications.

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

Plain language analysis: Under existing rules for continuing education programs, there is a lack of uniformity among the Marriage and Family Therapists, Professional Counselors and Social Worker Sections with respect to continuing education, including the criteria and acceptance of various programs. Current rules do not allow credential holders access to continuing education courses offered to social workers or professional counselors. Additionally, credential holders may not receive continuing education credit for teaching, publishing or presenting. Finally, under current rules, credential holders are not able to take courses approved or sponsored by the American Psychology Association.

The modification to this rule will permit continuing education credits to be granted for additional items, including, but not limited to, teaching academic courses, publishing

professional books, and presenting at national conferences, all of which may require substantial preparation and/or research related to the knowledge and practice of marriage and family therapy. Additionally, this modification will permit continuing education credit to be granted to those credential holders who take courses approved by the Social Worker Section or by the Professional Counselors Section. Finally, the proposed rule will allow credential holders to take courses approved or sponsored by the American Psychology Association. Access to these courses will provide a substantial benefit to the practice of marriage and family therapy.

SECTION 1 creates MPSW 19.01 (4m) which requires licensees to take a minimum of 15 credits in approved marriage and family therapy continuing education programs and other educational activities. Four of those 15 credits must be in the subject area of marriage and family therapy ethics and boundaries.

SECTION 2 amends MPSW 19.02 (4) by requiring that any course or continuing education programs offered by an accredited college or university be related to the clinical practice of marriage and family therapy.

SECTION 3 creates MPSW 19.02 (5) to (8) (intro.) and (a) to (g) and provides that any continuing education program approved, sponsored or co-sponsored by a presenter approved by the Committee for the Approval of Continuing Education Sponsors of the American Psychological Association will be accepted. It also provides that any educational programs recognized as approved at the time of attendance as "Category I" continuing medical education programs by the Council on Medical Education of the American Medical Association or the American Osteopathic Association is acceptable. Additionally, any educational programs recognized by the Social Worker Section and the Professional Counselor Section are acceptable. Finally, if approved or recognized by one of the approved providers, credit will also be granted for the following: Formal presentations of relevant professional material at seminars, workshops, programs or institutes, which may include formal presentation and directed discussion of videotaped material: 2 CEHs per hour of continuing education for presenters, but no additional CEHs shall be granted for subsequent presentations of the same material; University, college or vocational technical adult education courses, which may include formal presentation and directed discussion of videotaped instruction; 20 CEHs per semester hour or 13.2 CEHs per quarter hour for instructors, but no additional CEHs shall be granted for subsequent presentations of the same material; Educational sessions at state and national conferences: 2 CEHs per hour of continuing education for presenters, but no additional CEHs shall be granted for subsequent presentations of the same material; Educational telephone network (ETN) courses: 2 CEHs per hour of continuing education for presenters, but no additional CEHs shall be granted for subsequent presentations of the same material; interactive internet courses: 2 CEHs per hour of continuing education for instructors, but no additional CEHs shall be granted for subsequent presentations of the same material; Authorship of a published chapter in a textbook or professional resource book, or a professional journal: 8 CEHs; Development of alternative media, computer software, videotapes, or audiotapes: 8 CEHs.

Summary of factual data and analytical methodologies: The Marriage and Family Therapist Section, in accordance with the Social Worker Section as well as the Professional Counselor Section, are amending their rules based on the sections' collective experience and understanding that

continuing education available to one section may be of professional benefit to the other sections.

Fiscal Estimate

The Department of Regulation and Licensing will incur the equivalent of \$1,913 costs in staff time to audit the continuing education requirements.

Anticipated costs incurred by private sector

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

Effect on small business

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

Agency Contact Person

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

Place where comments are to be submitted and deadline for submission: Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Email pamela.haack@drl.state.wi.us. Comments must be received on or before February 10, 2006 to be included in the record of rule-making proceedings.

Notice of Hearing Nursing [CR 05-121]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Board of Nursing in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting ss. 441.04 and 441.10, Stats., the Board of Nursing will hold a public hearing at the time and place indicated below to consider an order to repeal s. N 2.06 (4) (b), (c) and (d); to renumber s. N 2.06 (4) (a); to amend ss. N 2.03 (1) (c) and (2) (c), 2.04 (2) and (6) and 2.06 (1) (b); and to create s. N 3.04 (1m), relating to qualifications for examination and application procedures, temporary permits and refresher courses.

Hearing Date, Time and Location

Date: January 26, 2006
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 February 6, 2006, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statute interpreted: Sections 441.04 and 441.10, Stats.

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

Explanation of agency authority: The Board of Nursing has the authority under ss. 441.04 and 441.10, Stats., to establish the prerequisites for examination of registered nurses and licensed practical nurses, including the professional educational qualifications of those applicants who have graduated from nursing schools located outside of this state.

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

Plain language analysis: The proposed revision to s. N 2.03 (1) (c) eliminates the requirement that a graduate of a school of nursing other than a board-approved school, complete a board-approved qualifying examination prior to admission to the NCLEX examination. This rule primarily affects foreign graduates are required under the existing rule to take and pass the Commission on Graduates of Foreign Nursing Schools (CGFNS) Qualifying Examination. The rule revision allows foreign graduate nurse applicants to submit verification from the Credentials Evaluation Service (CES) of the Commission of Graduates of Foreign Nursing Schools (CGFNS), as proof of the equivalence of their nursing coursework prior to admission to NCLEX, instead of taking the qualifying examination. Under the proposed rule revision, passage of the qualifying examination will not be a mandatory requirement for licensure; however, an applicant may take the examination voluntarily. Studies have shown that the value of the qualifying examination as a predictor of successful passage of the NCLEX does not outweigh the additional cost and potential barrier resulting from the imposition of this as a prerequisite for taking the NCLEX. Foreign graduates are not restricted as to the number of attempts or scheduled NCLEX reexaminations which are taken.

The proposed revision of s. N 2.04 (2) and (6) inserts the reference to schools of practical nursing because the CGFNS coursework evaluation service was previously only available for schools of professional nursing. This rule primarily affects foreign graduate registered nurses. The CGFNS service has been expanded to include schools of practical nursing.

The proposed revision of s. N 2.06 (1) (b) limits the time period for renewal of the temporary permit which is issued to graduate nurses who are eligible to take NCLEX. Currently, an applicant is allowed to work as a nurse under a temporary permit for up to nine months, with renewals, if they have scheduled to take the NCLEX. Under the proposed revision, the permit will be limited to a period of three months or until the holder receives failing examination results with no option to renew for successive periods. The need for renewal of the temporary permit has been obviated by the increased

availability of the examination; the NCLEX is administered as a computer-based examination at multiple sites seven days per week as compared to the former periodic administration of the examination, which resulted in an applicant having to wait for a period of time to take or retake the examination.

The proposed revision to s. N 3.04 (1m) requires that an applicant for a license by endorsement who has not actively practiced as a nurse within five years must complete a board-approved nursing refresher course. A limited license will be issued to any such endorsement applicant for the purpose of completing the course. Upon successful completion of the refresher course, the applicant may petition the board for full licensure. This provision is similar to the existing requirement for renewal of a Wisconsin nursing license if the credential holder has not actively practiced as a nurse within five years after its renewal date under s. N 5.08 (2) (b).

Summary of factual data and analytical methodologies: The comparison information with the rules in adjacent states was obtained directly from contact with those states and a review of those state rules. The rule revisions were based upon a collection of information from various sources, including informational literature, studies, recommendations and departmental and board member reports. The comparison to the adjacent states demonstrates that the revisions are substantially consistent with the rules in those states.

Anticipated costs incurred by private sector: The Department of Regulation and Licensing has determined that this rule change will have no significant fiscal effect on the private sector.

Fiscal estimate

These rule changes will have no impact on funds of the Department of Regulation and Licensing.

Effect on small business

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

Agency contact person

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

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 152, P.O. Box 89235, Madison, Wisconsin 53708-8935. Email to pamela.haack@drl.state.wi.us. Comments must be received on or before February 6, 2006, to be included in the record of rule-making proceedings.

Submittal of proposed rules to the legislature

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

Health and Family Services

(CR 03-085)

Ch. HFS 2, relating to department recoupment of program benefit overpayments from program recipients.

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

(CR 05-098)

Ch. MPSW 3, relating to human services internship requirements for a social worker training certificate.

Public Service Commission

(CR 05-079)

Ch. PSC 111, relating the establishment of capital cost ratemaking principles for certain rate base electric generating facilities.

Rule orders filed with the revisor of statutes bureau

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

**Commerce
(CR 04-058)**

An order affecting chs. Comm 5 and 47, relating to Petroleum Environmental Cleanup Fund awards and associated credentials.

Effective 5-1-06.

**Commerce
(CR 04-135)**

An order affecting chs. Comm 2, 26, 95, and ch. PSC 186, relating to manufactured home communities.

Effective 3-1-06.

**Commerce
(CR 05-064)**

An order affecting ch. Comm 72, relating to cleaning methods for historic buildings.

Effective 3-1-06.

**Optometry Examining Board
(CR 05-036)**

An order affecting chs. Opt 5 and 6, relating to conduct, examinations and continuing education.

Effective 2-1-06.

**Regulation and Licensing
(CR 05-050)**

An order affecting ch. RL 1, relating to cheating on an examination and breach of examination security.

Effective 2-1-06.

**Veterans Affairs
(CR 05-091)**

An order affecting ch. VA 2, relating to the veterans retraining grant program.

Effective 2-1-06.

**Veterans Affairs
(CR 05-096)**

An order affecting ch. VA 2, relating to the veterans tuition reimbursement program.

Effective 2-1-06.

**Veterans Affairs
(CR 05-097)**

An order affecting ch. VA 2, relating to the assistance to needy veterans program.

Effective 2-1-06.

Public notices

Department of Natural Resources

Notice of Availability of a Legislative Report Relating to Wisconsin's Air State Implementation Plan

All interested persons are advised that the Department of Natural Resources (DNR) intends to submit proposed rules as contained in Natural Resources Board Order AM-03-05 (Clearinghouse Rule No. 05-072) to the United States Environmental Protection Agency (USEPA) for incorporation into Wisconsin's air state implementation plan to meet requirements contained in the Federal Clean Air Act 42 USC 7401, et seq. DNR has submitted these proposed rules to revise certain motor vehicle emission limitations in Table 1 of s. NR 485.04, Wis. Adm. Code. It also makes a minor revision to the catalytic converter replacement provisions in s. NR 485.06 (2), Wis. Adm. Code. All supporting information was supplied as a report to the legislative standing committees for environmental matters as required under s. 285.14 (2), Stats. Information on AM-03-05 can be viewed on the following website: <https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmoId=230#>

If you are unable to make copies of this information from the website and would like copies of the information supplied to the Wisconsin legislative committees, please call Ralph Patterson, DNR, at 608-267-7546 or send a request via email to Ralph.Patterson@dnr.state.wi.us.

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