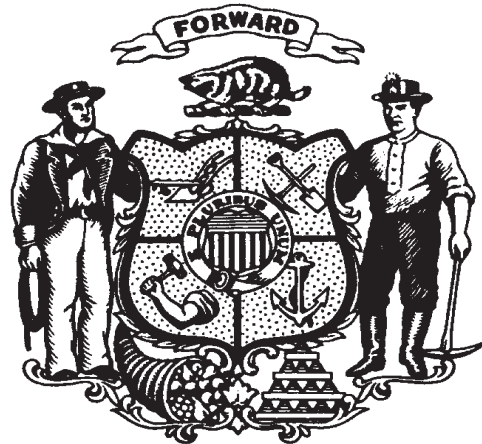


Wisconsin Administrative Register

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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.

Agriculture, Trade and Consumer Protection

Rules adopted revising **chs. ATCP 10 and 11**, relating to a poultry flock certification program.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including the national poultry improvement program (NPIP). The NPIP is designed to prevent the spread of *Salmonella pullorum*, fowl typhoid and, in the case of turkeys, *Mycoplasma gallisepticum*. NPIP is governed by 9 CFR 145 and 147. NPIP enrollment is voluntary, but non-enrolled flocks are subject to certain movement restrictions.

(2) Current DATCP rules prohibit the import, use, sale or movement of poultry, farm-raised game birds or their eggs for breeding or hatching unless they originate from flocks that are enrolled in NPIP and meet NPIP standards. Current DATCP rules also prohibit the exhibition of poultry or farm-raised game birds at a fair, exhibition or swap meet unless they originate from an NPIP “*pullorum*-typhoid clean” or equivalent flock, or are individually tested for *pullorum*-typhoid.

(3) NPIP is primarily designed for large commercial flocks that move birds or eggs in interstate commerce. NPIP requires yearly testing of all sexually mature birds, and routine inspections. Fees for enrollment in the program differ based on flock size and purpose, and range from \$20 to \$200. NPIP enrollment and testing may be cost-prohibitive for small flocks. Current rules restrict market access and exhibition by

small producers of poultry and farm-raised game birds, and impose an unnecessary burden on those producers. Some small producers may be tempted to ignore or subvert current rules, in order to market or exhibit their poultry or farm-raised game birds. That may, in turn, create unnecessary risks of disease.

(4) It is urgently necessary to provide alternative disease monitoring options for small producers of poultry and farm-raised game birds, so that those producers can legally and economically move, market and exhibit their birds. The current lack of alternatives creates an unnecessary economic hardship, and an unnecessary risk of disease spread.

(5) DATCP has proposed rules which would create practical disease monitoring alternatives for small producers of poultry and farm-raised game birds. DATCP is proceeding to adopt those rules by normal rulemaking procedures. However, normal rulemaking procedures require at least a year to complete. A temporary emergency rule is needed to eliminate unnecessary hardship and risk in the short term, and to provide practical and effective disease monitoring for this year’s fair and exhibition season.

Publication Date:	March 3, 2006
Effective Date:	March 3, 2006
Expiration Date:	July 31, 2006
Hearing Date:	March 31, 2006

Commerce

(Commercial Buildings, Chs. Comm 61–65)

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

Finding of Emergency

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

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

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

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

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

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

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

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

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, s. 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.

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

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

Finding of Emergency

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

Publication Date: December 15, 2005
Effective Date: December 15, 2005
Expiration Date: May 14, 2006
Hearing Date: January 13, 2006
Extension Through: July 12, 2006

2. Rules were adopted revising s. **NR 10.25**, relating to the issuance of turkey hunting permits.

Plain Language Analysis

This rule change will allow the department to issue turkey tags remaining after the initial permit drawing in accordance with state statute, which is first-come, first-served. Additionally, this rule updates code language to accurately describe how permits are currently issued (by zone and by time period) and establishes that no person may obtain more than one turkey carcass tag per day.

Exemption from finding of emergency

2005 Wisconsin Act 25, allowed the department to utilize the procedure under s. 227.24, Stats., to promulgate rules implementing s. 29.164, Stats., for the period before the date on which permanent rules take effect, but may not exceed the period authorized under s. 227.24 (1) (c) and (2), Stats. Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), Stats., the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

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

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

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate and administer grant programs. The State legislature has delegated responsibility for rule-making to the Department of Natural Resources. Normal rule-making procedures will not allow the establishment of the rules in time to allocate funds during this fiscal year. Failure to establish rules during FY06 will result in lost opportunity for Wisconsin interests to compete for federal grants that improve the public health, public good and the environment through the development of alternative renewable energy and biochemical sources from forestry biomass.

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

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

Finding of Emergency

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

Publication Date: March 27, 2006
Effective Date: April 1, 2006
Expiration Date: August 29, 2006
Hearing Date: July 5, 2006
 [See Notice This Register]

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 ss. NR 328.31 to 328.36, relating to shore erosion control on rivers and streams.

Finding of Emergency

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

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits,

all shore protection projects on rivers and streams require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2006 construction season, with specific standards for shore erosion control structures on rivers and streams.

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

Regulation and Licensing

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

Plain language analysis

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

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

Exemption from finding of emergency

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

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

[See Notice This Register]

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
Hearing Date: February 27, 2006
Extension Through: July 2, 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
Hearing Date: March 15, 2006
Extension Through: July 25, 2006

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

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

Finding of emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the

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

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

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

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

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

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered

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

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

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

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

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

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Animal Health, including farm-raised deer health, movement, registration and identification. Chapter ATCP 10, Wis. Adm. Code.

Objective of the rule. This rule will modify current animal health rules. Among other things, this rule may address requirements for farm-raised deer health testing, registration and fee structure, record keeping, movement and other technical changes.

Policy Analysis

Farm-raised Deer

DATCP regulates animal health including deer farms, deer imports and deer movement. This includes rules related to registration of deer farms, hunting preserves, disease testing and monitoring requirements, and individual identification for farm-raised deer under ss. 95.18, 95.20 and 95.55. Stats. Current rules require specific disease testing, a monitoring status for chronic wasting disease (CWD), and identification of farm-raised deer for import and intrastate movement. The current rules also specify other requirements of registered farm-raised deer keepers, such as minimum acreage for hunting preserves, record keeping requirements, and escape reporting.

When DATCP developed the current rules, the United States Department of Agriculture (USDA) had not yet established federal requirements for CWD monitoring and testing for interstate movement; or established criteria for state certification status. USDA has now proposed federal standards, and DATCP and the industry have gained more experience related to CWD in farm-raised deer herds.

Current rules require all keepers of farm-raised deer to register with DATCP. The type of registration and the associated fee is based on the number of deer in the herd. The current fee is not based on the purposes for which the herd is kept, the workload that it creates for DATCP, or the health risks associated with herd management practices.

Among other things, this rule may:

- Align Wisconsin's farm-raised deer regulatory program with federal standards.

- Address the handling of escaped farm-raised deer.

- Require herd plans for herds that are diagnosed with a disease.

- Require post-depopulation management of premises where herds were infected with infectious diseases.

- Modify record keeping and identification requirements for farm-raised deer herds.

- Modify the registration and fee structure for farm-raised deer herds.

- Modify disease monitoring requirements.

Technical Changes

This rule may also make technical changes to a number of current animal health rules.

Comparison with federal regulations

USDA has established regulations for the identification and interstate movement of farm-raised deer, and has established standards for Brucellosis and Tuberculosis testing. Current DATCP rules are consistent with these federal requirements.

USDA recently proposed standards for a national CWD program. The proposed national program will include testing and monitoring requirements, and will modify farm-raised deer identification requirements. DATCP proposes to modify current state rules to be consistent with the new federal program.

Entities affected by the rule

This rule will affect keepers of farm-raised deer and veterinarians providing services to keepers of farm-raised deer. This rule may also have a limited impact on other persons engaged in the production, sale or movement of livestock.

Policy alternatives

If DATCP takes no action, current rules will remain in effect. When the national CWD program is implemented, current Wisconsin rules will be inconsistent with federal standards. Among other things, that may limit markets available to the farm-raised deer industry. Current rules do not adequately address all of the issues that have come to light, in recent years, related to the control of CWD in farm-raised deer.

Statutory authority

None at this time.

Staff time required

DATCP estimates that it will use approximately 0.8 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

Agriculture, Trade and Consumer Protection

Subject

Restricting Release of Credit Reports; Security Freezes
Chapter ATCP 112, Wis. Adm. Code

PRELIMINARY OBJECTIVE:

Adopt rules to interpreting and administer s. 100.54, Wis. Stats., as required by the Legislature.

Policy Analysis

Section 100.54, Stats., created by 2005 Wisconsin Act 140, regulates access to consumer credit reports. Among other things, the statute allows a consumer to put a "security freeze" on a consumer credit report. A "security freeze" limits the release and distribution of a consumer credit report.

Among other things, s. 100.54 requires the Department of Agriculture, Trade and Consumer Protection ("DATCP") to define what constitutes proper identification for a consumer

who wishes to place a security freeze his or her credit report. DATCP rules must be consistent with federal law related to proper identification for purposes of placing a security freeze on a consumer credit report.

This rule will implement the legislative mandate. DATCP may also adopt related rules as necessary. DATCP may adopt these rules under s.100.54 or 100.20(2), Wis. Stats. (Unfair Trade Practices and Methods of Competition).

POLICY ALTERNATIVES:

The Legislature has directed DATCP to adopt rules. DATCP has no alternative but to do so. DATCP has not yet determined the content of the rules.

Statutory authority

Sections 100.54 and 100.20(2), Wis. Stats.

Staff time required

DATCP estimates that it will use approximately .50 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, holding public hearings, coordinating advisory council discussions and communicating with affected persons and groups. DATCP will assign existing staff to develop this rule.

Commerce

Subject

Objective of the rule. The proposed rules would implement the provisions of 2005 Wisconsin Act 358. The rules will establish minimum standards and qualifications for certification of woman–owned businesses, and define the process for obtaining the certification.

Policy Analysis

The Department is required under current law to maintain a database of businesses that are owned by women, but is not required to certify such businesses. Under the proposed rules, as required by Act 358, the Department would certify businesses that are at least 51 percent owned, controlled, and actively managed by women. The Department would charge applicants a processing fee of \$50. The rules would not create preferences in governmental procurement for these businesses. The alternative of not promulgating the rules would result in noncompliance with the corresponding mandates in Act 358.

Statutory authority

Sections 560.035 (1) (bm) and (c) of the Statutes, as created by 2005 Wisconsin Act 358.

Staff time required

The staff time needed to develop the rules is expected to range from 200 to 500 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Entities affected by the rule

The rules may affect woman–owned businesses, and private– and public–sector entities with supplier–diversity programs that relate to woman–owned businesses.

Comparison with federal regulations

Title 49 of the *Code of Federal Regulations*, Part 26, Subpart D, addresses certification standards for

disadvantaged business enterprises that participate in federal Department of Transportation financial assistance programs. Those enterprises include businesses that are substantially owned by women having a personal net worth which does not exceed \$750,000. Subpart E addresses the certification procedures, which include criteria for corresponding state–level Unified Certification Programs.

Natural Resources

Subject

Objective of the rule. The proposed rule will define the extent and basic conceptual framework of groundwater management areas as directed in 2003 Wisconsin Act 310. The rule will also implement provisions of Act 310 related to evaluation of impacts from proposed high capacity wells to groundwater protection areas and springs, and evaluation of proposed wells with a water loss of greater than 95%.

Policy analysis

2003 Wisconsin Act 310 expanded the state’s scope of authority over high capacity wells to include factors in addition to impacts on nearby municipal water supplies. Specifically, the law requires consideration of impacts to certain sensitive water resources and impacts from wells with high water loss prior to issuance of an approval to construct a high capacity well. The primary issue addressed in the proposed rule will involve delineation of processes and criteria to determine the significance of impacts to sensitive water resources and relevant factors to consider in evaluating proposed high capacity wells and the issuance or denial of necessary approvals.

Act 310 also recognized that there are areas of the state that have experienced substantial lowering of groundwater levels since settlement and that these areas would benefit from a comprehensive regional groundwater management approach. Act 310 created the concept of groundwater management areas to facilitate comprehensive groundwater management and planning in these areas and directed the department to define the extent of groundwater management areas through administrative rules. The proposed rule will specify the areal extent of groundwater management areas and define the basic conceptual framework for groundwater management areas.

Statutory authority

Sections 281.34 and 227.11, Wis. Stats.

Staff time required

Approximately 350 hours of staff time will be required to complete the rule.

Entities affected by the rule

The proposed rule will be of great interest to those parties that own and operate high capacity well systems, or that anticipate they may apply for high capacity well approvals in the future, including municipal water utilities, agricultural and industrial interests, real estate developers, recreational facility owners and local units of government. The rule will also interest citizens in the areas of proposed groundwater management areas, and other interest groups and citizens concerned with groundwater withdrawal issues in general or in regard to specific projects or areas of the state.

Comparison with federal regulations

There are no comparable federal regulations pertaining to impacts from groundwater withdrawals.

Public Instruction

Subject

The department proposes to repeal Chapter PI 15, establishing qualifications and selection procedures for CESA administrators, because of the elimination of statutory language relating to this chapter. 1995 Wisconsin Act 27 repealed the requirements that the department:

- Submit to the CESA board of control the names of at least 3 persons for possible appointment as an agency administrator {116.04 (1) (a) 1., 1993–94 Stats.}
- Promulgate rules relating to CESA administrator qualifications {116.04 (1) (a) 2., 1993–94 Stats.}
- Promulgate rules establishing procedures for the selection of agency administrator candidates {116.04 (1) (b), 1993–94 Stats.}

The proposed rule brings an existing rule into conformity with a statute that has been changed to no longer require the department's involvement in CESA administrator appointment activities. Therefore, pursuant to s. 227.16 (2) (b), Stats., the department will not hold public hearings regarding these rules.

Staff time required

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

Entities affected by the rule

CESAs

Comparison with federal regulations

n/a

Public Instruction

Subject

The proposed rule modifications will bring driver's education course standards under ch. PI 21, Wis. Admin. Code, into conformance with statutory standards under s. 115.28 (11), Stats., by deleting s. 21.06, relating to driver education aid and requiring all of the following:

- Instruction in the hazards posed by farm machinery and animals on highways.
- Instruction in the hazards posed by railroad grade crossings.
- Thirty minutes of instruction relating to organ and tissue donation and organ and tissue donation procedures.

Some technical changes will also be made.

Objective of the rule. n/a

Policy Analysis

Modifying the proposed rules will bring them into compliance with statutory requirements. Therefore, there is no alternative but to amend the rules.

Staff time required

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved

with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Comparison with federal regulations

n/a

Public Instruction

Subject

2003 Wisconsin Act 131 modified the youth options program under s. 118.55, Stats. Chapter PI 40 will be modified to conform to the changes made under the Act. The rules will also make technical modifications.

Policy Analysis

Objective of the rule. Eliminating the requirement that the state superintendent's decisions be sent by certified mail. The certified mail requirement is not specified in statute. Decisions by the state superintendent need to be sent, delivered and received as soon as possible. It takes more time to send a letter via certified mail because of the additional post-office paperwork and delivery requirements. If the recipient is not available to sign for the certified mail, the process is further delayed. After a certain number of refusals, the certified mail is returned to sender. Finally, if the recipient believes the information sent certified mail contains bad news, he or she may not sign for it.

Maintain the certified mail requirement. However, because of the rationale described above, this requirement is not practical nor is it timely. The other modifications provide clarification or alignment of rules with current statutes and should be maintained.

Staff time required

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

Entities affected by the rule

Public school districts.

Comparison with federal regulations

None.

Public Service Commission

Subject

Objective of the rule. To incorporate into the Administrative Code revisions to the National Electric Safety Code that have been adopted since 2002, to correct deficiencies, and make any other necessary changes to update and improve the safety code.

Policy Analysis

Volume 1 of the State Electrical Code (WSEC), codified in Wis. Admin. Code ch. PSC 114, is administered by the Commission. It deals with safety requirements for the installation, operation, and maintenance of primarily outdoor electric supply and communications lines and facilities used by utilities, including electric and telecommunications suppliers, railroads, and cable television providers.

Wis. Admin. Code ch. PSC 114 has been and is based on the National Electrical Safety Code (NESC). The NESC is

revised and updated every five years necessitating subsequent periodic revision of WSEC, Volume 1 to adopt the latest national standard. In 1979, 1982, 1985, 1988, 1991, 1994, 1997, and 2003, the Commission adopted the 1977, 1981, 1984, 1987, 1990, 1993, 1997, and 2002 editions of the NESC, respectively, with certain changes, deletions, and additions which apply in Wisconsin only and are contained in Wis. Admin. Code ch. PSC 114.

The 2007 edition of the NESC will be issued in August 2006. A corresponding revision of Wis. Admin. Code ch. PSC 114 is necessary to implement the latest edition of the national code and make any other necessary changes to update and improve the code.

Comparison with federal regulations

The National Electric Safety Code, which is incorporated by reference in Wis. Admin. Code ch. PSC 114 and which will be considered as part of this rulemaking.

Statutory authority

Wis. Stat. §§ 196.02 (3), 196.74 and 227.11 (2).

Staff time required

Approximately 200 hours of Commission staff time will be required in this rulemaking.

Entities affected by the rule

This rulemaking may affect electric, telecommunications and cable providers.

Usually, a volunteer technical advisory committee prepares, reviews, and recommends change proposals. Typically, representation includes persons from affected utilities, railroads or related trade associations, unions, the Department of Commerce, Commission staff, and public members.

Transportation

Objective of the rule. This rule making will amend ch. Trans 105, relating to licensing of driver schools and instructors, by repealing obsolete portions of the rule, and incorporating new provisions for administering driver training and the regulation of the schools and instructors providing that training as the result of the enactment of 2005 Wisconsin Act 397. This Act mandates that DOT promulgate rules to facilitate school and instructor licensure, operation and training. This rule making will also improve program efficiency and eliminate processes that add no value.

Policy Analysis

The current rule does not address a number of issues required by the 2005 Wisconsin Act 397. The Act requires rules to be promulgated related to:

- Filing of insurance and bond – the amount and format

- Procedures to authorize DMV knowledge and sign tests for instruction permits

- Fees for lost licenses

- Instructor knowledge test or alternative method for instructor certification

- Alternative options for instructors that fail the skill test twice

- Exception for medical data more frequently than 24 months

- Classroom only licensure procedures – communication and control

- Disqualifying offenses for school and instructor

- Satisfactory driving record

- Progressive enforcement actions against licensees for violations

- Location of driver school exceptions

- Safe vehicle operation criteria and placing a vehicle out of service

In addition, the rule will be made more user friendly for the schools and instructors, DMV, and the novice driver, especially relating to licensure and sanction criteria, and will include other necessary changes.

Since the legislature passed the Act, the number of policy alternatives is limited.

Comparison with federal regulations

The federal government does not regulate this type of driver school or instructors. The federal government does have regulations for entry–level commercial motor vehicle operators and instructors. See 49 CFR 380. These programs are similar, but are not impacted by 2005 Wis. Act 397.

Entities affected by the rule

DPI, driving schools and instructors, DMV, novice drivers, parents and guardians of novice drivers

Statutory authority

Section 227.11, Stats., and Ch. 343, Stats.

Staff time required

120 hours.

Workforce Development

Subject

Worker's compensation

Policy Analysis

Section 102.16 (2m) (g), Stats., as created by 2005 Wisconsin Act 172, requires the department to promulgate rules establishing standards for determining the necessity of treatment provided to an injured employee and requires that the rules establishing these standards shall, to the greatest extent possible, be consistent with Minnesota rules as amended January 1, 2006. The proposed rules will create these treatment guidelines.

Section DWD 80.02 (2) (e) 4. currently provides that if there are more than 3 weeks of temporary disability or any permanent disability, a insurance carrier or self–insured employer shall submit a final treating practitioner's report to the department. Section 102.13 (2) (c), Stats., as created by 2005 Wisconsin Act 172, adds the authority for the department to require an insurer or self–insured employer to submit to the department a final report of the employee's treating practitioner if the injured employee has undergone surgery to treat his or her injury, other than surgery to correct a hernia, regardless of the length of the temporary disability. The proposed rules will amend s. DWD 80.02 (2) (e) 4. to add this requirement.

Section DWD 80.03 provides certain conditions that must be fulfilled whenever an employer and an employee enter into a compromise agreement concerning the employer's worker's compensation liability for a particular injury to that employee. One of these conditions is that no compromise agreement may provide for a lump sum payment of more than the incurred medical expenses plus sums accrued as compensation or death benefits to the date of the agreement

and \$5,000 in unaccrued benefits where the compromise settlement in a claim other than for death benefits involves a dispute as to the extent of permanent disability. The proposed rules will increase the amount of unaccrued benefits that may be paid to an employee from \$5,000 to \$10,000.

The proposed rules will also establish a minimum permanent partial disability rating of 7.5% of the body as a whole at each level for the implantation of an artificial spinal disc. In addition, the rules will amend s. DWD 80.50, relating to computation of permanent disabilities, to include increased benefits for injury to the dominant hand. This amendment will codify the department's interpretation of s. 102.54, Stats., on injury to dominant hand. The proposed rules will also make a number of technical corrections due to statutory updates.

Statutory authority

Sections 102.13 (2) (c) and 102.16 (2m) (g), Stats., as created by 2005 Wisconsin Act 172, and ss. 102.39 and 227.11 (2), Stats.

Entities affected by the rule

Worker's compensation insurance companies, employers, employees, and health care providers

Comparison with federal regulations

There are no federal requirements on the changes in the proposed rules.

Staff time required

200 hours.

Submittal of rules to legislative council clearinghouse

*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

On May 24, 2006, the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

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

The proposed rule-making order relates to land surveyor education and experience requirements.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 3, 2006 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

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

Pamela.haack@drl.state.wi.us

Controlled Substances Board

On May 24, 2006, the Controlled Substances Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 961.11 (1) and 961.14, Stats.

The proposed rule-making order relates to the scheduling of two schedule I controlled substances, N-benzylpiperazine (BZP) and 2,5 dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7) under chapter 961, Stats., of the Uniform Controlled Substances Board.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 7, 2006 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

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

Pamela.haack@drl.state.wi.us

Controlled Substances Board

On May 24, 2006, the Controlled Substances Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 961.11 (1) and 961.14, Stats.

The proposed rule-making order relates to the scheduling of two schedule I controlled substances,

alpha-methyltryptamine (AMT) and 5-methoxy-N, N-dissopropyltryptamine (5-MeO-DIPT) under chapter 961, Stats., of the Uniform Controlled Substances Board.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 7, 2006 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

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

Pamela.haack@drl.state.wi.us

Corrections

NOTICE IS HEREBY GIVEN That pursuant to s. 227.15, Wis. Stats., the Department of Corrections submits proposed s. DOC 332.19, relating to the establishment of an annual sex offender registration fee to partially offset the costs of monitoring persons who are on probation, parole, or extended supervision, to the Wisconsin Legislative Council on May 31, 2006, for review.

Analysis

Establishment of an annual fee to partially offset the costs of monitoring persons who are required to register as sex offenders and who are in the custody of the Department of Corrections or who are on probation, parole, or extended supervision.

Agency Procedure for Promulgation

Public hearing is required under s. 227.16 (1), Wis. Stats., and will be scheduled at a later date.

Contact Person

The Division of Community Corrections is primarily responsible for the promulgation of this rule.

Kathryn Anderson, (608) 240–5049

kathryn.anderson@doc.state.wi.us

Employment Relations Commission

On May 30, 2006, the Wisconsin Employment Relations Commission submitted a proposed administrative rule to the Legislative Council regarding calculation of a qualified economic offer under the Municipal Employment Relations Act.

Agency Procedure for Promulgation

A public hearing will be required if requested pursuant to Sec. 227.16 (2) (e), Stats.

Analysis

The proposed rule submitted to the Legislative Council consists of matters inadvertently omitted from the Notice and Report to Legislature regarding Clearinghouse Rule 02–037 as to which the Commission has previously received a Clearinghouse Report and conducted public hearings.

Contact Person

Notice prepared by Peter Davis, General Counsel,
Wisconsin Employment Relations Commission.
peter.davis@werc.state.wi.us.

Health and Family Services**Subject**

The proposed rules affect ch. HFS 132 relating to nursing homes.

Federal statutes or regulations which require adoption of or are relevant to the substance of proposed rules

Federal conditions of participation in Medicaid and Medicare for nursing homes are found in 42 CFR 483. These federal regulations and ch. HFS 132 address similar subject areas, including resident rights, quality of care; health, nursing, dietary, and pharmacy services; staffing, and physical environment.

Court decisions directly relevant to the proposed rule

None known.

Public hearings

Public hearings will be held in 5 locations across the state. All hearings will be held from 9:00 a.m. to 3:00 p.m. at each of the following locations and dates:

July 24, 2006 – Southeastern Regional Office, 819 North 6th Street, Room 40, Milwaukee, WI;

July 25, 2006 – Wilson Street State Office Building, 1 West Wilson Street, Room 751, Madison, WI;

July 26, 2006 – Northeastern Regional Office, 200 North Jefferson Street, Room 152 A, Green Bay, WI;

July 28, 2006 – Northern Regional Office, 2187 North Stevens Street, Large Conference Room, Rhinelander, WI;

July 31, 2006 – Western Regional Office, 610 Gibson Street, Room 123, Eau Claire, WI.

Names and phone numbers of agency contacts

For substantive questions on rules contact:
Otis Woods, Director, Bureau of Quality Assurance
(608) 267-7185
Woodsol@dhfs.state.wi.us

For small business considerations contact:

Rosie Greer
608-266-1279
greerrj@dhfs.state.wi.us

For rules processing information contact:

Rosie Greer
608-266-1279
greerrj@dhfs.state.wi.us

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

On May 24, 2006, the Professional Counselor Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 457.03 (3), Stats.

The proposed rule-making order relates to required examinations for licensure as a professional counselor.

Agency Procedure for Promulgation

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

Contact Person

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

Pamela.haack@drl.state.wi.us

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

On May 24, 2006, the Professional Counselor Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 457.03 (3), Stats.

The proposed rule-making order relates to psychotherapeutic counseling by professional counselors.

Agency Procedure for Promulgation

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

Contact Person

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

Pamela.haack@drl.state.wi.us

Podiatrists Affiliated Credentialing Board

On May 24, 2006, the Podiatrists Affiliated Credentialing Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.085 (5) (b), 227.11 (2), 448.665 and 448.695 (2), Stats.

The proposed rule-making order relates to waiver of continuing podiatric medical education.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 26, 2006 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

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

Pamela.haack@drl.state.wi.us

Regulation and Licensing

On May 24, 2006, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 227.11 (2), Stats., and s. 440.88 (3), Stats., which was created as s. 440.75 by 2005 Wisconsin Act 25, section 9421 (10q) and renumbered by the revisor under s. 13.93 (1) (b), Stats.

The proposed rule-making order relates to a code of conduct and renewal requirements for substance abuse professionals.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 27, 2006 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

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

Pamela.haack@drl.state.wi.us

Revenue

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

Analysis

The proposed rule amends s. Tax 2.39, relating to apportionment of apportionable income.

Agency Procedure for Promulgation

A public hearing on the proposed rule will be scheduled.

The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

Contact Information

If you have questions, please contact:

Dale Kleven

Income, Sales and Excise Tax Division

Telephone (608) 266-8253

E-mail dkleven@dor.state.wi.us

Workforce Development

On May 31 2006, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: Sections 103.005 (1), 106.50 (1s), 106.52 (2), 111.375 (1), 230.89 (1) and 227.11 (2) (a), Stats.

The proposed rules affect chs. DWD 218 to 225, relating to procedures for civil rights complaints and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 26, 2006. The organizational unit responsible for the promulgation of the proposed rules is the DWD Equal Rights Division.

Contact Information

Elaine Pridgen

Telephone: (608) 267-9403

Email: elaine.pridgen@dwd.state.wi.us

Rule-making notices

Notice of Proposed Rule Employment Relations Commission

[CR 06-061]

NOTICE IS HEREBY GIVEN That pursuant to ss. 111.70(4)(cm) 8s., 111.71 and 227.11 (2)(a), Stats., and interpreting ss. 111.70 (1) (dm), (fm) and (nc) and 111.70 (4) (cm) 5s., Stats., and according to the procedure set forth in s. 227.16 (2)(e), Stats., the Wisconsin Employment Relations Commission will adopt the following rule as proposed in this notice, without public hearing unless, within 30 days after publication of this notice on **June 15, 2006**, the Wisconsin Employment Relations Commission is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is a representative of a farm, labor, business or professional group which will be affected by the rule.

Analysis Prepared By the Wisconsin Employment Relations Commission

The Wisconsin Employment Relations Commission proposed to repeal and recreate ch. ERC 33 Appendix Forms A, B and C as part of the complete revision of its administrative rules encompassed in Clearinghouse Rule 02-037. Following consideration of the Legislative Council's Clearinghouse Report and comments from the public, it was the intent of the Commission to include ERC 33 Appendix Forms A, B and C in its Notice of Submission of Proposed Rule to Legislature (which did include ERC 33 and ERC 33 Appendix Form D) and in its own rule-making Order. However, ERC Appendix Forms A, B and C were inadvertently omitted from that Notice and the Commission's subsequent rule-making Order. Therefore, the Commission proposes to repeat the rule making process as to ERC Appendix Forms A, B and C.

The proposed rule interprets Secs. 111.70 (1) (dm), (fm), and (nc) and 111.70 (4) (cm) 5s. Stats.

Sections 111.70 (4) (cm) 8s., 111.71 (1) and 227.11 (2) (a), Stats. give the Commission authority to repeal and recreate these rules.

The proposed rule specifies the manner in which a qualified economic offer is calculated.

There are no federal regulations that address a qualified economic offer nor are there similar rules in adjacent states.

Rule Text:

The Wisconsin Employment Relations Commission proposes an order to repeal and recreate ERC 33 Appendix Forms A, B and C relating to procedures for the administration of the Municipal Employment Relations Act.

SECTION 1. CHAPTER ERC 33 Appendix Forms A, B and C are repealed and recreated to read:

EMPLOYMENT RELATIONS COMMISSION

Chapter ERC 33

APPENDIX

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

QUALIFIED ECONOMIC OFFER CALCULATION

FORM A

This form and Form B must be provided by the district to the labor organization 60 days prior to contract expiration, or whenever a qualified economic offer is made, whichever is earlier.

DEVELOPING A QUALIFIED ECONOMIC OFFER

Developing Employee Base

1. Identify all school district professional employees (as defined by Sec. 111.70(1)(ne), Stats.) who were represented by the labor organization for the purposes of collective bargaining and contract administration on the 90th day prior to the expiration of the current/most recently expired bargaining agreement. School district professional employees who were employed on the 90th day but who thereafter retire, resign or are terminated prior to the expiration of the current/most recently expired contract are included. School district professional employees on layoff, sick leave or leave of absence must be included if they continue to be represented by the labor organization for the purposes of collective bargaining and contract administration. School district professional employees who are replacing employees who are in leave status are not included unless they are represented by the labor organization for the purposes of collective bargaining and contract administration in the same bargaining unit as the employee being replaced.

Developing Fringe Base

2. Identify all fringe benefits and your percentage contribution toward the cost thereof as such benefits and contributions existed on the 90th day prior to the expiration of the current/most recently expired agreement, or the 90th day prior to the date on which your negotiations actually commenced if there is no previous collective bargaining agreement between the parties. If your fringe benefit contribution level is expressed as a dollar amount, convert the dollar amount to a percentage for the purposes of this calculation.

Total Base Cost Calculation

3. Using the employees identified in Step 1 and the fringe benefits and employer percentage contribution levels identified in Step 2, complete Form B to calculate the employer cost of compensation and fringe benefits for the year preceding the expiration date specified in your current/most recently expired contract. For the purposes of this calculation, assume that any cost increase incurred during the year was in effect for the entire year. In your calculation, you must include the cost of any benefits Step 1 employees who retire will receive/received prior to the expiration of your current/most recently expired contract. Do not include the cost of providing benefits to employees who retired before the 90th day prior to the expiration of the current/most recently-expired contract.

Enter the total base year salary and fringe benefit costs from Form B here.

Salary _____

Fringe _____

Total _____

QEO 1 Dollar Amounts

4. Calculate 3.8%, 2.1% and 1.7% of your Step 3 total and enter here

3.8% = _____ 2.1% = _____ 1.7% = _____.

For the purposes of the following calculations, do not assume any change in: (1) the identity of Step 1 employees; (2) the level of service they provide to the district or (3) the fringe benefits Step 1 employees received or the applicable employer % contribution level. Do assume that any cost increase incurred during the year was in effect for the entire year.

QEO 1 Fringe Benefit Calculation

5. Using the same employees identified in Step 1 and the fringe benefits and employer percentage contribution levels identified in Step 2, calculate the actual employer cost of maintaining the fringe benefits and employer percentage contribution levels for the first 12-month period following the stated expiration date in the current/most recently expired contract. If your contract will have a duration of less than 12 months, prorate your cost calculation to reflect your actual contract duration, if appropriate. Enter this cost here and on Form B, QEO 1, fringe benefit cost.

6. Subtract your Step 3 base fringe benefit cost from your Step 5 cost and calculate the result as a percentage of your total Step 3 base year cost. Enter the result here and on Form B, QEO 1, fringe benefit percentage.

QEO 1 Step Calculation

7. For the first 12-month period following the stated expiration date in the current/most recently expired contract, calculate the total additional cost of providing each employee identified in Step 1 with any salary increase to which they would be entitled by virtue of an additional year of service on the salary schedule (longevity is to be included if part of salary schedule). Enter this cost here and on Form B, QEO 1, Step Advancement.

8. Calculate your Step 7 cost as a percentage of the total Step 3 base year cost. Enter the result here.

End of first year QEO calculation

If you are bargaining a contract with a duration of 12 months or less, stop and proceed to the Qualified Economic Offer Instruction, Form C.

Start of second year QEO calculation

Total QEO 1 Base Cost Calculation

9. Repeat Step 3 for the first 12-month period following the stated expiration date of your current/most recently-expired contract. Enter the total QEO 1 salary and fringe benefit costs from Form B here.

Salary

Fringe

Total

QEO 2 Dollar Amounts

10. Calculate 3.8%, 2.1% and 1.7% of your Step 9 total and enter here:

3.8% = 2.1% = 1.7% =

QEO 2 Fringe Benefit Calculation

If your contract will have a duration of less than 24 months, prorate your QEO 2 cost calculation to reflect your actual contract duration, if appropriate.

11. Repeat Step 5 for the second 12-month period following the stated expiration date in the current/most recently expired contract. Enter this cost here and on Form B, QEO 2, fringe benefit cost.

12. Subtract your Step 9 fringe benefit cost from your Step 11 cost and calculate the result as a percentage of your Step 9 total QEO 1 cost. Enter the result here and on QEO 2, Form B, fringe benefit percentage.

13. Repeat Step 7 calculation for the second 12-month period following the stated expiration date in the current/most recently-expired contract. Enter the cost here and on Form B, QEO 2, Step Advancement.

14. Calculate your Step 13 cost as a percentage of your Step 9 total QEO 1 cost. Enter the result here.

Proceed to the qualified economic offer instruction Form C.

ERC 33 Appendix WISCONSIN ADMINISTRATIVE CODE FORM B

This Form and Form A must be provided by the district to the labor organization 60 days prior to contract expiration, or whenever a qualified economic offer is made, whichever is earlier.

Table with columns: Salary, Base Year, QEO1, 1/. Includes rows for Salary Schedule, Additional Step Advancement, Longevity, Extended Contracts, Co-Curricular Pay, Extra Duty Pay, Athletic Events, Department Head, Curricular Work, Overload Pay, M-Team, IEP, Supervision, Other, Total Extra Duty Pay, Summer School, Severance Pay, Sick Leave Payout, Other, Total Salary Cost.

¹ The QEO1 and QEO2 salary costs will remain the same as the base year costs for longevity (if not a step), extended contracts, co-curricular pay, extra duty pay, summer school, severance pay, sick leave payout, etc. unless the rate of compensation increases due to an increase in the salary schedule or an additional year of service entitles base year employee(s) to additional compensation.

² Enter base year salary subtotal.

³ Enter QEO1 salary subtotal.

Fringe Benefit Costs

Credit Reimbursement ^{4/}	_____	_____	_____
Social Security	_____	_____	_____
Retirement	_____	_____	_____
Health Insurance	_____	_____	_____
No.S _____ No.F _____			
Employer % Contribution			
Level S _____ F _____	_____	_____	_____
Dental Insurance	_____	_____	_____
No.S _____ No.F _____			
Employer % Contribution			
Level S _____ F _____	_____	_____	_____
Vision Insurance	_____	_____	_____
No.S _____ No.F _____			
Employer % Contribution			
Level S _____ F _____	_____	_____	_____
Life Insurance	_____	_____	_____
Employer % Contribution			
Level _____	_____	_____	_____
Disability Insurance	_____	_____	_____
Employer % Contribution			
Level _____	_____	_____	_____
Long-Term Care Insurance	_____	_____	_____
Employer % Contribution			
Level _____	_____	_____	_____
Other _____	_____	_____	_____
Total Fringe Benefit Cost	_____	_____	_____
Total Salary and Fringe Benefit Cost	_____	_____	_____

QEO1 Increased/decreased salary cost as a percentage of base

Year total salary and fringe benefit cost _____

QEO1 Increased/decreased fringe benefit cost as a percentage of base

Year total salary and fringe benefit cost _____

QEO2 Increased/decreased salary cost as a percentage of QEO1

total salary and fringe benefit cost _____

QEO2 Increased/decreased fringe benefit cost as a percentage of

QEO1 total salary and fringe benefit cost _____

Attach a chart identifying the number of base year employees at each step and lane on any existing salary schedule. We swear that we completed this form in as accurate a manner as possible.

Superintendent/
Business Manager

_____ Date

Treasurer

_____ Date

^{4/} The QEO1 and QEO2 credit reimbursement costs will remain the same as the base year costs unless the rate of reimbursement increases due to an increase in the salary schedule.

**WISCONSIN EMPLOYMENT RELATIONS
COMMISSION QUALIFIED ECONOMIC OFFER
INSTRUCTIONS
FORM C**

Utilize the following instructions to determine the components of a qualified economic offer.

Note: If payment of any appropriate salary increase would raise your fringe benefit costs (due to resultant social security and retirement cost increases) above 1.7% of Step 3 (base cost), then reduce the salary increase in the amount necessary to keep the combined cost of fringe benefits, steps, and average salary increase at 3.8% of Step 3 (base cost).

DEVELOPING A QUALIFIED ECONOMIC OFFER

When calculating any appropriate salary increase or decrease, include any increased or decreased salary cost in extended contracts, co-curricular pay, extra duty pay, etc., which is produced by salary schedule increases or decreases or payment of steps or lanes.

1. Complete Forms A and B.

2. Using the information on Form A, determine how the law requires you to proceed by identifying the cost combination that applies to the first 12-month period of your offer.

A. If the combined costs identified by Step 6 (fringe benefits) and Step 8 (steps), are less than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purpose of collective bargaining and contract administration:

1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.

2. Pay all eligible employees any salary increase to which they are entitled by virtue of an additional year of service on the salary schedule. Include longevity payments if they are part of the salary schedule.

3. Pay an average salary increase to all employees in an amount determined by the difference between 3.8% of Step 3 (base cost) and the combined cost of Step 6 (fringe benefits) and Step 8 (steps) and in a manner which does not alter the relationship between steps and lanes in your existing salary structure. The options available for distribution of the general salary increase are a uniform dollar amount increase on each salary cell; or a uniform % increase to each salary cell; or an increase in the base which increases each cell in accordance with the existing salary structure.

B. If the combined costs identified by Step 6 (fringe benefits) and Step 8 (steps) are 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:

1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.

2. Pay all eligible employees any salary increase to which they are entitled by virtue of an additional year of service on the salary schedule. Include longevity payments if they are part of the salary schedule.

C. If the combined costs identified by Step 6 (fringe benefits) and Step 8 (steps) are more than 3.8% of Step 3 (base cost) but the cost of Step 6 (fringe benefits) is less than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:

1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.

2. Calculate the prorated portion of Step 7 (steps) which can be funded by 3.8% of Step 3 (base cost) minus the cost identified by Step 5 (fringe benefits). To identify the proration percentage, identify the amount of money available to fund steps and divide by the amount of money necessary to fully fund steps.

3. Pay the same prorated salary increase to all eligible employees entitled thereto by virtue of an additional year of

employment on the salary schedule. Include longevity payments if they are part of the salary schedule. For example, if the foregoing calculation would allow payment of half of the Step 7 (steps) salary increase to eligible Step 1 employees, you must pay one-half of the salary increase to which any of your actual employees are entitled by virtue of an additional year of service on the salary schedule during the first 12 months of your offer.

D. If the cost identified by Step 6 (fringe benefits) is 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining the contract administration:

1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.

E. If the cost identified by Step 6 (fringe benefits) is more than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:

1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.

2. You may decrease the salary of all employees in an amount determined by the difference between the cost identified by Step 6 (fringe benefits) and 3.8% of Step 3 (base cost) and in a manner which does not alter the relationship between steps and lanes on your existing salary structure. The options available for distribution of the average salary decrease are a uniform dollar amount decrease on each salary cell; or a uniform % decrease on each salary cell; or a decrease in the base which decreases each cell in accordance with the existing salary structure.

For the second year or portion thereof, repeat your evaluation of options A–E utilizing the costs identified in Steps 9–14 of Form A.

Initial Regulatory Flexibility Analysis

The proposed rule will have no economic impact on small business.

Fiscal Estimate

The proposed rule will have no fiscal impact.

Contact Person

The agency contact person is Peter G. Davis, General Counsel, Wisconsin Employment Relations Commission. (608 266–2993 /peter.davis@werc.state.wi.

Notice of Hearings Health and Family Services

[CR 06–053]

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.498 (14), 50.02 (1), (2) (a), (b) 2., (bm), (bn), (d), and (3) (a) to (d), 50.03 (4) (a) 1. a., 50.095 (3) (am), 50.098, and 227.11 (2) (a), Stats. and interpreting ss. 49.498, 49.499, 50.02 (1), 50.03, 50.04, 50.05, 50.065, 50.07, 50.09, 50.095, 50.135, and 50.14, Stats., the Department of Health and Family services proposes to repeal, renumber, renumber and amend, amend, and create rules relating to nursing homes and affecting small businesses.

Hearing Date(s) and Location(s)

Date and Time	Location
July 24, 2006 9:00 a.m. to 3:00 p.m.	Southeastern Regional Office 819 North 6 th Street, Room 40 Milwaukee, WI
July 25, 2006 9:00 a.m. to 3:00 p.m.	Wilson Street State Office Building 1 West Wilson Street, Room 751 Madison, WI
July 26, 2006 9:00 a.m. to 3:00 p.m.	Northeastern Regional Office 200 North Jefferson Street Room 152 A Green Bay, WI
July 28, 2006 9:00 a.m. to 3:00 p.m.	Northern Regional Office 2187 North Stevens Street Large Conference Room Rhinelander, WI
July 31, 2006 9:00 a.m. to 3:00 p.m.	Western Regional Office 610 Gibson Street, Room 123 Eau Claire, WI

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication at a hearing difficult; you require an interpreter or a non-English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Place Where Written Comments May be Submitted

Written comments may be submitted at the public hearing or submitted to the Department using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>. Comments may also be submitted to Otis Woods, Director, Department of Health and Family Services, Bureau of Quality Assurance, 1 West Wilson, Room 1150, P.O. Box 2969, Madison, WI 53701–2969, phone: (608) 267–7185, fax: (608) 267–0352, e-mail: Woodsol@dhfs.state.wi.us.

Deadline for Comment Submission

The deadline for submitting comments to the Department is 4:30 p.m. on August 1, 2006.

Analysis Prepared by the Department of Health and Family Services

Nursing homes are regulated by the Department under ch. HFS 132, ch. 50, Stats., and, if a nursing home participates as a provider in the Medicaid and Medicare programs, the nursing home is also regulated by the Department under 42 CFR 483. Nursing home construction and remodeling is regulated by the Department of Commerce under chs. Comm 61 to 65, the Commercial Building Code. Many of the provisions in ch. HFS 132 are outdated and overly prescriptive, or are duplicative of ch. 50, Stats., 42 CFR 483, or chs. Comm 61 to 65. Through this rulemaking order the Department proposes to repeal or revise outdated or overly prescriptive rule provisions, and to repeal provisions that are duplicative of the requirements that are already stated in and monitored under ch. 50, Stats., 42 CFR 483, or chs. Comm 61 to 65.

In addition, the Department also proposes to create rule provisions requiring applicants for nursing home licensure to disclose the qualifications of any person with authority to manage the nursing home; any occurrences that required closure of a residential or health care facility or that required

moving its residents; and any financial difficulties that a person or business entity connected with the nursing home has had in operating a residential or health care facility. The Department further proposes to create a quality assurance and improvement committee to distribute funds as allowed under ss. 49.499 (2m), Stats., to nursing homes for innovative projects that improve the efficiency and cost effectiveness of operating a nursing home and that improve the quality of life of residents.

The Department believes that the proposed revisions to ch. HFS 132 will not have an adverse effect on the health, safety, and welfare of existing or future residents of nursing homes as provisions that the Department believes provide greater protection of the health, safety, and welfare of residents than either ch. 50, Stats., 42 CFR 483, or chs. Comm 65 to 66 are retained. The additional application requirements are not expected to result in any increase in costs and the proposed removal of outdated, prescriptive, and duplicative provisions from ch. HFS 132 will make it easier for nursing homes to achieve compliance and provide care to residents in a cost effective manner and ensure residents are protected from unanticipated closures due to financial instability of nursing home licensees and in fact lower costs. The proposed creation of the quality assurance committee and subsequent distribution of funds under s. 49.499 (2m), Stats., is expected to not only improve residents quality of life in nursing homes, but is expected to stimulate innovation and competition within and among nursing homes in a way that will result in the highest quality care to residents.

The proposed removal of outdated, overly prescriptive, or duplicative provisions include provisions relating to residents rights, community organization access, general medical records requirements, oxygen use, resident care planning, medical services, certain dietary standards related to sanitation, meal services and staff hygiene, pharmacy consultant, diagnostic services, emergency dental services, social worker qualification requirements, activity staffing requirements, certain active treatment requirements, requirements regarding short-term care admissions, general housekeeping and maintenance items, building requirements relative to corridor width, doors, locks, exit stairways, oxygen storage services, mechanical systems such as sewage, plumbing, telephone, lighting and ventilation, and certain design areas such as windows, bed capacity, grab bars, dining and activity areas, design of the food service area and ancillary areas. As indicated above, these requirements duplicate other rules or are outdated or overly prescriptive.

The Department proposes to retain provisions that the Department believes provide greater protection of the health, safety, and welfare of residents than either ch. 50, Stats., 42 CFR 483, or chs. Comm 65 to 66 or those that are not addressed in other law or regulations, including provisions relating to the following:

Rules requiring a facility to notify residents of basic services and fees, and practice nondiscriminatory treatment based on pay source were kept as these regulations afford residents greater protection that was not available in either ch. 50, Stats., or federal regulation.

Rules pertaining to locked units were retained as no other regulations address this issue.

Rules pertaining to the nursing home administrator were retained. Although federal regulations address this requirement, ch. HFS 132 is more prescriptive requiring the administrator be full-time and requiring prompt notice to the Department when a vacancy occurs.

Rules addressing admissions of residents who are developmentally disabled, under the age of eighteen and day care clients were also kept as no other rules govern their care.

Rules relating to involuntary discharge. In this area, ch. HFS 132 provides greater protection for residents.

Rules requiring the provision of basic nursing care. These provisions reflect a basic standard of practice not found in other regulations.

Several nurse staffing rules. There are no comparable federal standards. Chapter HFS 132 requires a registered nurse to be on duty based on the number of residents in need of skilled nursing care.

Provisions relating to pharmacy services were also retained because there is no federal counterpart.

Requirements were also kept for specific resident care equipment such as mattresses, pillows, linens, over bed tables, window coverings, etc., as the federal regulations are too broad.

Rules requiring a disaster plan and training for staff were maintained because there is no federal counterpart.

Effect on Small Business (Initial Regulatory Flexibility Analysis)

The Department licenses approximately 340 private and 60 government owned nursing homes to accept patients with specific categories of health care needs. Skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) provide primarily medical care to restore individuals to their rehabilitative potential. Institutions for mental diseases (IMDs) serve residents with psychotic and nonpsychotic mental illness. Ninety percent of these homes are skilled nursing facilities that generally have a permanent core staff of registered or licensed practical nurses and other staff who provide the elderly, and other individuals, with nursing and personal care services that include assistance with activities of daily living such as bathing, toilet use, eating and dressing, skin care, rehabilitative services for mental illness, and special treatment such as tracheostomy care, ostomy care, respiratory treatment, and tube feedings. Analysis of the data compiled in the Wisconsin Department of Health and Family Services, Division of Public Health, Bureau of Health Information and Policy *Wisconsin Nursing Homes and Residents, 2004* (PPH 5374-04) September 2005 suggests that at least 40% of all licensed facilities have 85 or fewer beds and average gross annual revenues below \$5 million assuming a 100% occupancy rate and annual per bed charges of \$56,000. Approximately 81% of these beds are in privately owned facilities. The department approximates, however, that only about 10% of the privately owned facilities meet the definition of small business because some of these facilities are part of large corporations owning several facilities and employing more than 25 employees.

Through this rulemaking order the Department proposes to do the following:

Repeal or revise outdated or overly prescriptive rule provisions;

Repeal provisions that are duplicative of the regulations that are already stated in and monitored under ch. 50, Stats., 42 CFR 483, or chs. Comm 61 to 65;

Create rule provisions requiring applicants for nursing home licensure to disclose, in the application, the qualifications of any person with authority to manage the nursing home; any occurrences requiring closure of a residential or health care facility and relocating its residents; and any financial difficulties that a person or business entity

connected with the nursing home has had in operating a residential or health care facility; and

Create a quality assurance and improvement committee to distribute funds as allowed under ss. 49.499 (2m), Stats., to nursing homes for innovative projects that improve the efficiency and cost effectiveness of operating a nursing home and that improve the quality of life of residents.

The Department does not expect the new application requirements to result in any increase in costs and believes that the proposed removal of outdated, prescriptive, and duplicative provisions from ch. HFS 132 will make it easier for nursing homes to achieve and maintain compliance, provide care to residents, and ensure that residents are protected from unanticipated closures due to financial instability of nursing home licensees. The proposed creation of the quality assurance committee and subsequent distribution of funds under s. 49.499 (2m), Stats., is expected to not only improve residents quality of life in nursing homes, but is expected to stimulate innovation and competition within and among nursing homes in a way that will result in cost effective, high quality care to residents.

Pursuant to criteria adopted by the Department, the proposed rule may affect a substantial number of small businesses because at least 10% of the nursing homes affected by the proposed rules may be considered small businesses. However, the proposed rules will not have a significant economic impact on these nursing homes because the proposed rules do not include increased reporting, design or operational standards, or capital requirements and none of the proposed changes are expected to increase operating expenditures, including annualized capital expenditures, or reduce revenues by more than the 2005 consumer price index (CPI) of 3.4%. Any costs that may be associated with the additional application requirements most likely will not meet or exceed the 2005 CPI. The proposed removal of outdated, prescriptive, and duplicative provisions are expected to lower costs for all nursing homes.

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

Small Business Regulatory Coordinator

Rosie Greer

Greerrj@dhfs.state.wi.us

608-266-1279

Fiscal Estimate

The proposed rules will not affect state or local government costs and will not have a significant economic impact on the private sector.

Obtaining Copies of Rules and Fiscal Estimate

A copy of the full text of the rules and the fiscal estimate can be obtained at no charge from the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> or by contacting the contact person listed below.

Contact Person

Otis Woods, Director

Department of Health and Family Services

Bureau of Quality Assurance

1 West Wilson, Room 1150

P.O. Box 2969

Madison, WI 53701-2969

phone: (608) 267-7185, fax: (608) 267-0352

e-mail: Woodsol@dhfs.state.wi.us

Notice of Hearing Natural Resources (Fish, Game, etc.)

[CR 06-065]

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.09 (2) (intro.), 23.091, 23.11 (1), 23.22 (2) (b) 1., 23.28 (3), 27.01 (2) (j) and 227.11 (2) (a), Stats., interpreting ss. 23.09 (2) (intro.), 23.091, 23.11 (4), 23.17, 23.175, 23.22 (2) (a), 23.28 (3), 23.293, 27.01 (2) (i) and (j) and 28.04 (2), Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 45.04 (1) (g), Wis. Adm. Code, relating to the regulation of firewood entering and exiting Department lands. The rule prohibits a person from possessing firewood that originates from greater than 50 miles from the campground on that property where the wood would be used, or the property itself if there is no campground, or from outside the borders of the state of Wisconsin. Firewood from sources approved by the Wisconsin Department of Agriculture, Trade and Consumer Protection is allowable. Firewood includes all wood, processed or unprocessed, meant for use in a campfire. The purpose of this rule is to regulate firewood entering properties managed by the Department to reduce the risk of introduction and spread of emerald ash borer and other invasive insects and diseases of trees.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected: Any small business that sells firewood for use on state lands

b. Description of reporting and bookkeeping procedures required: Any recordkeeping procedures for small business will be established by the Department of Agriculture, Trade and Consumer Protection

c. Description of professional skills required: None

The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

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

Wednesday, **July 5, 2006** at 7:00 p.m.

Video conference participation will be available at:

Room MAC137, UW-Green Bay

2420 Nicolet Drive

Green Bay

Room 227, Pyle Center

702 Langdon Street

Madison

Room 220, UW-Wausau

518 South 7th Avenue

Wausau

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for

qualified individuals with disabilities upon request. Please call Dr. Andrea Diss Torrance at (608) 264-9247 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

This rule regulates the movement of firewood into department properties to reduce the risk of introduction and spread of emerald ash borer (EAB) and other invasive pests and diseases of trees. This rule would prohibit firewood from sources greater than 50 miles from the campground or from outside the boundaries of the state of Wisconsin from entering Department properties. Firewood from sources approved by the WI DATCP would be allowable. Workload to institute this rule includes:

- development of criteria for allowable firewood with DATCP;
- asking if firewood is being brought into the campsite and from where during the check in process;
- confiscating and destroying prohibited firewood, estimated increase in LTE costs of \$1,050 (1 hour per day, 7 days per week for 15 weeks) annually for 8 major state parks = \$8,400 (the Department will have a better estimate of this workload later in the summer of 2006 with the implementation of the emergency rule and the results of a survey of instate campers on their transport of firewood);
- working with local firewood dealers to ensure supplies of safe, affordable firewood at campgrounds; and
- communicating the new rule and reasons for it.

There are no estimated fiscal effects on county, city, village, town, school district, technical college district or sewerage districts from these rules. We do not anticipate significant costs to the private sector from this rule.

There are no estimated long-term fiscal impacts associated with the rule. Expenses associated with public education and information will be concentrated in the first 2 years of the program. After 3-4 years it is anticipated the public will have received the message and costs for notification will decrease.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the rule may be submitted via U.S. mail to Dr. Andrea Diss Torrance, Bureau of Forest Science, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until July 10, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Dr. Diss Torrance.

Notice of Hearing Regulation and Licensing [CR 06-060]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and s. 440.88 (3), Stats., which was created as s. 440.75 by 2005 Wisconsin Act 25, section 9421 (10q) and renumbered by the revisor under s. 13.93 (1) (b), Stats., and interpreting s. 440.88, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to create chs. RL 164 and 165 relating to a code of conduct and renewal requirements for substance abuse professionals.

Hearing Date, Time and Location

Date: June 27, 2006
Time: 9:00 A.M.
Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson Street)
 Room 122
 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 July 3, 2006, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes interpreted:
 Section 440.88, Stats.

Statutory authority:

Section 227.11 (2), Stats., and s. 440.88 (3), Stats., which was created as s. 440.75 by 2005 Wisconsin Act 25, section 9421 (10q) and renumbered by the revisor under s. 13.93 (1) (b), Stats.

Explanation of agency authority:

The Department of Regulation and Licensing has the authority under s. 440.88 (3), Stats., which was created as s. 440.75 by 2005 Wisconsin Act 25, section 9421 (10q) and renumbered by the revisor under s. 13.93 (1) (b), Stats., to create rules for the transfer of credentialing authority of substance abuse counselors, clinical supervisors and prevention specialists to the Department from the Department of Health and Family Services.

Related statute or rule:

Subchapter VII of chapter 440, Stats.

Plain language analysis:

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and Other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective January 1, 2006. This proposed rule-making order creates rules relating to requirements for renewal, as well as the bases for discipline for substance abuse counselors, clinical supervisors and prevention specialists.

SECTION 1 defines "department" and "substance abuse professional" and as well establishes a uniform definition of unprofessional conduct for all substance abuse professionals certified by the Department of Regulation and Licensing.

SECTION 2 establishes the authority granted to the department (as the credentialing authority for substance abuse professionals) by Wis. Stat. § 440.08 (3) (b), to impose additional requirements for renewals 5 years after expiration of a certificate, in order to assure competency of the applicant.

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

Summary of factual data and analytical methodologies: In preparation of ch. RL 164, department staff reviewed the

existing practice standards of the Wisconsin Certification Board ["WCB"] and compared them to definitions of unprofessional conduct found for health care professions affiliated with the department. WCB had separate codes of conduct for each certification category, and staff consolidated them into one code, utilizing standard Department of Regulation and Licensing terms and phraseology. The draft was submitted for comment within the department and then routed to the Substance Abuse Advisory Committee. The Committee approved the language as drafted.

Department staff based ch. RL 165 on existing code provisions. The rule effectuates the intent of Wis. Stat. § 440.08 (3) (b), which requires a credentialing authority to promulgate rules to require completion of additional requirements establishing competency for the holder of a credential who fails to renew his or her credential within 5 years after its renewal date.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The rule represents a codification of existing standards for use by the Department of Regulation and Licensing. As this codification does not represent any significant change in the standards of unprofessional conduct, no effect on small businesses or economic impact is anticipated.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

Anticipated costs incurred by private sector: The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal Estimate

These rules implement the regulation of substance abuse professionals as enacted by 2005 Wisconsin Act 25. These rules neither increase the department's revenues or expenditures beyond those required by 2005 Wisconsin Act 25. These rules do not appear to have any impact on local government costs.

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

Agency contact person:

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

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 July 3, 2006 to be included in the record of rule-making proceedings.

Notice of Hearing Regulation and Licensing

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s.

227.11 (2), Stats., and s. 440.88 (3), Stats., which was created as s. 440.75 by 2005 Wisconsin Act 25, section 9421 (10q) and renumbered by the revisor under s. 13.93 (1) (b), Stats., and interpreting s. 440.88, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order on emergency rules to create chs. RL 164 and 165, relating to a code of conduct and renewal requirements for substance abuse professionals.

Hearing Date, Time and Location

Date: June 27, 2006

Time: 9:00 A.M.

Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)

Room 122

Madison, Wisconsin

Appearance 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 July 3, 2006, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes interpreted: Stats. s. 440.88.

Statutory authority: Wis. Stats. ss. 227.11 (2) and 440.88 (3), which was created as Wis. Stats. s. 440.75 by 2005 Wisconsin Act 25, section 9421 (10q) and renumbered by the revisor under Wis. Stats. s. 13.93 (1) (b).

Explanation of agency authority: The Department of Regulation and Licensing has the authority under Wis. Stat. § 440.88 (3), which was created as Wis. Stat. § 440.75 by 2005 Wisconsin Act 25, section 9421 (10q) and renumbered by the revisor under Wis. Stat. § 13.93 (1) (b), to create rules for the transfer of credentialing authority of substance abuse counselors, clinical supervisors and prevention specialists to the Department from the Department of Health and Family Services.

Related statute or rule: Subchapter VII of chapter 440, Stats.

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

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

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

Summary of factual data and analytical methodologies: The profession of substance abuse treatment providers had previously been regulated by the Department of Health and Family Services through a delegation to the Wisconsin Certification Board. A code of conduct and rules for renewal existed under that regulatory scheme. This emergency rule merely continues that regulatory scheme until the department can promulgate permanent rules under the advice of the advisory committee as contemplated by 2005 Wisconsin Act 25.

Fiscal Estimate

These rules implement the regulation of substance abuse professionals as enacted by 2005 Wisconsin Act 25. These rules neither increase the department's revenues or expenditures beyond those required by 2005 Wisconsin Act 25. These rules do not appear to have any impact on local government costs.

Anticipated costs incurred by private sector: The department finds that this rule has no significant fiscal effect on the private sector.

Effect on small business: These proposed rules will have no significant economic impact on small businesses, as defined in Wis. Stat. § 227.114 (1). This rule does not create any new or different restrictions on substance abuse counselors practicing in a small business setting. Such counselors previously were required to comply with a code of conduct substantially similar in content and were subject to a restriction on late renewal of credentials. This rule maintains that oversight during the transfer of regulation to the Department of Regulation and Licensing without adding new or additional restrictions.

Notice of Hearing Transportation [CR 06-064]

NOTICE IS HEREBY GIVEN that pursuant to s. 343.055 (5), Stats., and interpreting s. 343.055, Stats., the Department of Transportation will hold a public hearing in Room 144-B of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **29th day of June, 2006**, at 1:00 PM, to consider the amendment of provisions of ch. Trans 102, Wisconsin Administrative Code, that are related to CDL exemptions.

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 south side of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 343.055, Stats.

Statutory authority: s. 343.055 (5), Stats.

Explanation of agency authority: Section 343.055 (5) requires the Department to issue administrative rules implementing all federal CDL waivers.

Related statute or rule: s. 343.055, Stats., and 49 CFR 383.3

Plain language analysis: Sections 343.055, Stats., and ss. Trans 102.20 and 102.20, .22 and .23 implement a number of CDL waivers states are permitted to grant to drivers of certain commercial motor vehicles. These waivers were originally permitted under various "waivers" which were published in

the Federal Register. The USDOT later codified these waivers in the Code of Federal Regulations and slightly changed some of them in that process. This proposed rule would implement the subtle changes created when the USDOT codified the regulations now found at 49 C.F.R. 383.3.

Section 343.055 (5), Stats., requires the Department to issue administrative rules addressing all federal CDL waivers.

1. **Firefighters and Emergency Responders.** Section 343.055 (1) (b), Stats., currently exempts firefighters from all state CDL licensing requirements while they operate specific commercial motor vehicles (fire trucks, hook and ladder trucks and foam or water transporters). They must be employed by a volunteer or paid fire fighting organization and the person is operating emergency or fire fighting equipment necessary to the preservation of life or property or the execution of emergency management functions and equipped with a siren and warning lights and the operation is in the routine performance of other duties of the fire organization.

Section 49 C.F.R. 383.3(d)(2) permits states to exempt firefighters and other persons who operate CMVs, which are necessary to the preservation of life or property or the execution of emergency governmental functions. The federal rule allows additional CMVs to be operated without a CDL, including fire trucks, hook and ladder trucks, foam or water transport trucks, police SWAT team vehicles, ambulances, or other vehicles that are used in response to emergencies. This rule making will grant an exemption from CDL requirements that is consistent with federal law.

2. **Seasonal Farm Service Workers.** Section Trans 102.20 (8) (f), Wis. Admin. Code, is amended to conform to the codified requirements of 49 CFR 383.3(f)(3)(vii) with regard to the CDL exemption for certain farm service workers. Federal law now requires the 150-mile limit to be measured from the farm being serviced instead of from the worker's place of employment. This rule change adopts that requirement.

3. **Farmers.** 49 CFR 383.3(d)(1) permits persons, such as family members, to qualify as CDL exempt farmers who were not exempted under the original federal waiver or current s. 343.055 (1) (c), Stats. This rule making creates s. Trans 102.20 (5) to implement the looser federal requirements and to permit family members to drive CMVs if they meet federal requirements for exemption from CDL requirements. Federal law does not define the extent of a farmer's "family" for purposes of the farmer exemption. This leaves persons who are related but are outside of a farmer's immediate family unsure as to whether they do or do not qualify for the farmer exemption. This rule making clarifies that most relatives and their spouses will qualify for the exemption. The proposed rule would allow any parent, grandparent, child, aunt, uncle, brother, sister, grandchild, nephew, niece, first cousin, legal guardian, step-parent, step-child, step-brother, step-sister, or their spouses to qualify as part of the farmer's family.

4. **Snowplow Operators.** The current provisions of s. Trans 102.22 are moved into amended s. Trans 102.23, in order to consolidate the complete CDL waiver provisions into one section of the code. The odd restricted license provisions available to farm service workers remain segregated into their own regulatory provision, s. Trans 102.20. No substantive changes are intended in consolidating the regulation. Some language changes occurred simply to make the provision consistent in drafting style with the other subsections of s. Trans 102.23.

5. **Pyrotechnics Industry Seasonal 4th of July Waiver.** USDOT allows states to exempt drivers hauling large, less than 500 pounds of Class 1.3G, explosives (fireworks) from some licensing requirements between June 30 and July 6 of

any year. The drivers must meet various qualifications and DMV then must issue special restricted CDL licenses to such drivers. DMV has had no requests to issue such licenses and has concerns about the safety aspects of issuing CDL licenses to haul explosives to drivers who have not been trained or tested with regard to such shipping. Implementing this license type would be expensive, and DMV does not believe many drivers would qualify or seek this type of license. Therefore, DMV is not proposing to implement the pyrotechnics waiver permitted under 49 CFR 383.3(g). (None of Wisconsin's adjoining states have implemented this waiver, either.)

Summary of, and preliminary comparison with, existing or proposed federal regulation: Section 49 CFR 383.3 permits states to exempt firefighters and others operating commercial motor vehicles from CDL requirements for the preservation of life or property or the execution of emergency governmental functions and the operation is not limited to the response or return from a fire or other emergency or the routine performance of other duties of the fire organization. It also permits farmers and their families to operate CMVs without CDLs, permits seasonal farm service workers to obtain limited CDLs without testing, permits snowplow operators from small communities to operate CMVs for snowplowing purposes in emergencies without CDLs, and permits some fireworks haulers to operate without CDLs around the 4th of July. This proposed rule making brings Wisconsin's CDL exemptions more closely into parallel with those permitted by federal law, except that it does not implement the limited pyrotechnics waiver.

Comparison with Rules in Adjacent States: All adjacent states and Washington D.C. have CDL exemptions for firefighters and emergency responders, farmers, and military members similar to those proposed in this regulation. The states are inconsistent with respect to other waivers; some have implemented them, others not. The waivers for the neighboring states and their particular requirements are discussed below by state and subject area.

Illinois

RV Operators. Drivers of recreational vehicles operated primarily for personal use are exempt from CDL requirements. [625 ILCS 5/6–500(6)(b)(i)]

Military. United States Department of Defense vehicles being operated by non–civilian personnel are exempt from CDL requirements. This includes any operator on active military duty, members of the Reserves, National Guard, personnel on part–time training, and National Guard military technicians (civilians who are required to wear military uniforms and are subject to the Code of Military Justice) [625 ILCS 5/6–500(6)(b)(ii)]

Fire/Emergency. Drivers of firefighting and other emergency equipment with audible and visual signals, owned or operated by or for a governmental entity, which is necessary to the preservation of life or property or the execution of emergency governmental functions which are normally not subject to general traffic rules and regulations are exempt from CDL requirements. [625 ILCS 5/6–500(6)(b)(iii)]

Farmer. The driver of any motor vehicle controlled or operated by or for a farmer is waived from CDL licensing requirements when the motor vehicle being used is transporting agricultural products, implements of husbandry, or farm supplies within 150 air miles from the originating farm. However, for those drivers of any truck–tractor semitrailer combination or combinations, the waiver applies only when the driver is a farmer or a member of the farmer's family and the driver is 21 years of age or more and has successfully completed any tests the Secretary of State deems

necessary. A farmer or a member of the farmer's family who operates a truck–tractor semitrailer combination or combinations pursuant to the waiver is granted all of the rights and shall be subject to all of the duties and restrictions of the law applicable to the driver who possesses a commercial driver's license issued under Illinois law, with minor exceptions. For purposes of the Illinois farmer waiver, a person must be a natural or in–law spouse, child, parent, or sibling to be considered a member of the farmer's family. [625 ILCS 5/6–507(c)]

Emergency Snow Removal. An employee of a township or road district with a population of less than 3,000 operating a vehicle within the boundaries of the township or road district for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting is exempt from CDL requirements when the employee is needed to operate the vehicle because the employee of the township or road district who ordinarily operates the vehicle and who has a commercial driver's license is unable to operate the vehicle or is in need of additional assistance due to a snow emergency. [625 ILCS 5/6–507(c)(5)]

Farm Service Seasonal Employees. Illinois provides limited licenses to farm–related service industries consistent with federal guidelines. The restricted license shall be available for a seasonal period or periods not to exceed a total of 180 days in any 12–month period. [625 ILCS 5/6–521(b); Title 92, s. 103096, Illinois Admin. Code]

Temporary Pyrotechnics Waiver. Illinois has not implemented any pyrotechnics waiver.

Iowa

Farmers. A farmer or a person working for a farmer while operating a commercial motor vehicle owned by the farmer within 150 air miles of the farmer's farm to transport the farmer's own agricultural products, farm machinery, or farm supplies to or from the farm is exempt from CDL requirements. The exemption applies to farmers who assist each other through an exchange of services and shall include operation of a commercial motor vehicle between the farms of the farmers who are exchanging services. [IA Stats s. 321.176A]

Firefighters. A fire fighter while operating a fire vehicle for a volunteer or paid fire organization or a peace officer, while operating a commercial motor vehicle for a law enforcement agency, under conditions necessary to preserve life or property or to execute related governmental functions is exempt from CDL requirements. [IA Stats s. 321.176A]

Military. The following persons are exempt from CDL requirements when operating commercial motor vehicles for military purposes:

- Active duty military personnel.

- Members of the military reserves.

- Members of the national guard on active duty, including personnel on full–time national guard duty, personnel on part–time national guard training, and national guard military technicians.

- Active duty United States coast guard personnel. [IA Stats s. 321.176A]

RV Operators. A person while operating a motor home solely for personal or family use is exempt from CDL requirements. The law also exempts 5th Wheel Trailer operators if the motor vehicle has a gross vehicle weight rating of less than 26,001 pounds and the travel trailer or fifth–wheel travel trailer is towed solely for personal or family use. [IA Stats s. 321.176A]

Farm Service Industry Drivers. Iowa Statute 321.176B permits the Iowa DOT to exempt Farm Service Industry Drivers by rule. There are a number of restrictions and

requirements to qualify for this restricted license. [s. 761—607.49, IA Admin Code]

A home care aide operating a motor vehicle in the course of the home care aide's duties.

Snow Emergency Drivers. Iowa does not appear to have implemented the federal waiver for emergency snow plow operations in small municipalities.

Temporary Pyrotechnics Haulers. Iowa has not implemented any pyrotechnics waiver.

Minnesota

RV Operators. Persons operating a qualifying recreational vehicle may do so with a Class D license and are not required to hold a CDL. To qualify, a recreational vehicle must be a travel trailer (including those that telescope or fold down), chassis-mounted camper, motor home, tent trailer, or converted bus that provides temporary human living quarters. In addition, the vehicle may not be used as the residence of the owner or occupant, must be used while engaged in recreational or vacation activities; and must be either self-propelled or towed on the highways incidental to the recreational or vacation activities. [ss. 169.01 subd. 25, 171.02 subd. 2. (c) (3), MN Stats.]

Military. A person in the employ or service of the United States federal government is exempt from CDL requirements while driving or operating for military purposes a commercial motor vehicle owned by or leased to the United States federal government if the person is: (1) on active duty in the U. S. Coast Guard; (2) on active duty in a branch of the U. S. Armed Forces, which includes the Army, Air Force, Navy, and Marine Corps; (3) a member of a reserve component of the U. S. Armed Forces; or (4) on active duty in the Army National Guard or Air National Guard, which includes (i) a member on full-time National Guard duty, (ii) a member undergoing part-time National Guard training, and (iii) a National Guard military technician, who is a civilian required to wear a military uniform. The exemption does not apply to a U. S. Armed Forces Reserve technician. [171.03(b), MN Stats.]

Fire/Emergency. Persons operating authorized emergency vehicles can do so on a Class D license and are not required to have a CDL. Vehicles included are:

A vehicle of a fire department;

A publicly owned police vehicle or a privately owned vehicle used by a police officer for police work under agreement, express or implied, with the local authority to which the officer is responsible;

A vehicle of a licensed land emergency ambulance service, whether publicly or privately owned;

¹ This exemption appears to violate federal law requirements.

An emergency vehicle of a municipal department or a public service corporation, approved by the commissioner of public safety or the chief of police of a municipality;

A qualified volunteer rescue squad;

A vehicle designated as an authorized emergency vehicle upon a finding by the commissioner of public safety that designation of that vehicle is necessary to the preservation of life or property or to the execution of emergency governmental functions. [ss. 169.01 subd. 5, 171.02 subd. 2.(c)(2), MN Stats.]

Farmer. Persons operating farm trucks do not need a CDL if the farm truck is:

Controlled and operated by a farmer, including operation by an *immediate family member* or an employee of the farmer;

Used to transport agricultural products, farm machinery, or farm supplies, including hazardous materials, to or from a farm;

Not used in the operations of a common or contract motor carrier as governed by Code of Federal Regulations, Title 49, Part 365; and

Used within 150 miles of the farm. [171.02 subd. 2.(c)(1), MN Stats.]

Emergency Snow Removal. A person who operates a commercial motor vehicle for the purpose of removing snow or ice from a roadway by plowing, salting, or sanding is not required to hold a commercial driver's license if the person: (1) is an employee of a local unit of government with a population of 3,000 or less; (2) is operating within the boundaries of the local unit of government; (3) holds a valid class D driver's license; and (4) except in the event of a lawful strike, is temporarily replacing the employee who normally operates the vehicle but either is unable to operate the vehicle or is in need of additional assistance due to a snow emergency as determined by the local unit of government. [171.02 subd. 5, MN Stats.]

Farm Service Seasonal Employees. Minnesota does not appear to have adopted this exemption. Minnesota does have a restricted farm license for drivers 15 years of age who do not hold regular licenses and who drive farm vehicles in the course of working for their parents.

Temporary Pyrotechnics Haulers. Minnesota has not implemented any pyrotechnics waiver.

Michigan

RV Operators. Persons who drive a motor home or a vehicle used exclusively to transport personal possessions or family members for nonbusiness purposes are exempt from CDL requirements. [257.312e(13), MVC] Persons operating 5th wheel trailers or motor homes must obtain a state required non-CDL endorsement. [257.312i(1), MVC]

Military. A person serving in the armed forces of the United States if furnished with a driver's permit and operating an official motor vehicle in that service is exempt from any driver license requirement in Michigan, including CDL requirements. A person who is a civilian and in the employ of the armed forces of the United States is not exempt from obtaining a license.

Fire/Emergency. A police officer or a firefighter who has met the driver training standards of the Michigan fire fighters' training council are exempt from CDL requirements when operating an authorized emergency vehicle. [257.312e(12), MVC]

Farmer. Michigan law exempts farmers from CDL requirements if all of the following are met:

The vehicle is controlled and operated by a farmer or an employee or family member of the farmer;

The vehicle is used to transport agricultural products, farm machinery, farm supplies, or a combination of these items, to or from a farm.

The vehicle is not used in the operation of a common or contract motor carrier.

The vehicle is operated within 150 miles of the farm.

If the vehicle has a gross vehicle weight rating of 26,001 pounds or more on the power unit, the driver has a qualifying license endorsement that is issued upon successful completion of a knowledge test.

If the vehicle has a gross vehicle weight rating of 26,001 pounds or more or is a combination of vehicles having a gross vehicle weight rating of 26,001 pounds or more on the power and is carrying hazardous materials on which a placard is required under federal law, the driver needs an endorsement obtained by successfully completing both a knowledge test and a driving skills test. [257.312e(11), MVC]

Emergency Snow Removal. Michigan does not grant this federal waiver.

Farm Service Seasonal Employees. Michigan does not grant this federal waiver.

Temporary Pyrotechnics Haulers. Michigan has not implemented any pyrotechnics waiver.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: No data or analytical methodology was employed in considering this rule making.

Analysis and supporting documentation used to determine effect on small businesses: This rule making has no effect on small business. This affects only drivers operating fire fighting type commercial vehicles necessary for the preservation of life or property. The Department's Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or liabilities, nor will the private sector incur any costs.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Terry Ewing, Department of Transportation, Division of Motor Vehicles, Bureau of Field Services, Room 266, P. O. Box 8917, Madison, WI 57708-8917. You may also contact Mr. Ewing by phone at (608) 266-0428.

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

Notice of Hearing Workforce Development [CR 06-062]

NOTICE IS HEREBY GIVEN that pursuant to Sections 103.005 (1), 106.50 (1s), 106.52 (2), 111.375 (1), 230.89 (1), and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to procedures for civil rights complaints and affecting small businesses.

Hearing Information

Monday, June 26, 2006 at 1:30 p.m.
G.E.F. 1 Building, B103
201 E. Washington Avenue
Madison

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

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via

a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005 (1), 106.50 (1s), 106.52 (2), 111.375 (1), 230.89 (1) and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 101.055 (8), 103.10, 106.50 (6), 106.52 (4) and (5), 106.54, 111.39, and 230.85, Stats.

Explanation of agency authority. The Wisconsin Fair Employment Act is located at Subchapter II of Chapter 111, Stats. Section 111.375 (1), Stats., provides that the department may make, amend, and rescind such rules as are necessary to carry out the subchapter.

The Wisconsin Open Housing Law is found at s. 106.50, Stats. Section 106.50 (1s), Stats., provides that the department may promulgate such rules as are necessary to carry out the section.

Section 106.52 (2), Stats., provides that the department may promulgate such rules as are necessary to carry out protections under s. 106.52, Stats., relating to public places of accommodation or amusement.

Section 230.89 (1), Stats., requires the division to promulgate rules to carry out its responsibilities for enforcement of provisions commonly referred to as the "whistleblower law." The "whistleblower law" protects state employees from retaliation for disclosure of information under certain circumstances.

Under s. 103.10 (12), Stats., the department has responsibility for administrative enforcement of the family or medical law.

Section 106.54 (5), (6) and (7), Stats., provides that the Equal Rights Division shall receive certain types of complaints and process them in the same manner as fair employment complaints under s. 111.39, Stats. These types of complaints are:

Retaliation for reports to the Board on Aging and Long-Term Care under s. 16.009 (5) (d), Stats.

Retaliation for reporting the abuse of an elderly person to a state or county agency under s. 46.90 (4) (b), Stats.

Retaliation for reporting abuse in care and service residential facilities under s. 50.07 (3) (b), Stats.

Retaliation against a health care worker who reports that the quality of health care provided by a health care facility or provider violates any law, rule, or standard established by a professionally recognized accrediting or standard-setting body and poses a potential risk to public health or safety under s. 146.997, Stats.

Failure to comply with re-employment rights after National Guard, state defense force, or public health emergency service under s. 21.80 (7) (b), Stats.

Section 106.56 (4) (a), Stats., relating to discrimination because of a physical condition or developmental disability in post-secondary education, provides that the department shall review and investigate complaints with all the powers provided under s. 111.39, Stats., which relates to the department's powers and duties under the Wisconsin Fair Employment Act.

Section 101.055 (8), Stats., provides protection for public employees exercising their rights under the Public Employee Safety and Health Law, which is otherwise administered by the Department of Commerce. Employees who believe they

have been discharged or discriminated against because they have exercised rights under the law may file a complaint with the Equal Rights Division. If the Equal Rights Division determines that there is probable cause, it shall conduct a hearing, issue a decision, and order appropriate relief. Section 106.54 (4), Stats., also directs the Equal Rights Division to review complaints of discrimination against public employees exercising their rights with respect to occupational safety and health matters under s. 101.055 (8), Stats.

Section 103.005 (1), Stats., provides that the department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.

Summary of the proposed rules. The proposed rules will amend the fair employment rules in Chapter DWD 218 to specify the types of complaints that ss. 106.54 (5), (6), and (7) and 106.56, Stats., direct the Equal Rights Division to receive and process in the same manner as fair employment complaints under s. 111.39, Stats.

2005 Wisconsin Act 25 amends the Wisconsin Open Housing Law at s. 106.50 (6) (c) 2., Stats., to provide that the Attorney General shall represent complainants in cases in which the Equal Rights Division has made an initial determination of probable cause. The proposed rules will amend the open housing rules in Chapter DWD 220 to reflect this new requirement.

The Division proposes to create a new rule chapter at Chapter DWD 223 to provide procedures for processing discrimination or retaliation complaints by public employees exercising their rights under the Public Employee Safety and Health Law under s. 101.055 (8), Stats. The proposed rule chapter is based on the fair employment rules in Chapter DWD 218, except time frames for certain actions are shorter because s. 101.055 (8), Stats., provides that the Equal Rights Division shall process cases in shorter time frames. For this reason, the proposed rules provide that appeals of preliminary determinations or findings of no probable cause must be filed within 10 days, rather than 20 days. The proposed rules provide that the notice of hearing shall be sent no less than 20 days before the hearing, rather than 30 days. The requirement that parties submit witness and exhibit lists 10 days before hearing is eliminated. Also, unlike the fair employment statute, s. 101.055 (8) provides that decisions and orders of the Equal Rights Division are subject to judicial review under Chapter 227, Stats., rather than review by the Labor and Industry Review Commission.

All rules administered by the Civil Rights Bureau in the Equal Rights Division will be amended to provide that complaints and other documents may be filed by facsimile transmission. A faxed document will be considered to be filed on the date of transmission as recorded by the division's facsimile machine, except documents filed by fax after regular business hours or a day the offices of the division are closed shall be considered to be filed on the next business day of the division. Documents may not be filed by electronic mail unless expressly authorized by the equal rights officer or the administrative law judge assigned to the case. All rules will also be amended to provide that hearings may be recorded with either digital equipment or tape recording equipment. The rules administered by the Civil Rights Bureau are:

Chapter DWD 218, relating to fair employment and other issues designated in ss. 106.54 (5), (6), and (7) and 106.56, Stats.

Chapter DWD 220, relating to fair housing.

Chapter DWD 221, relating to public accommodations.

Chapter DWD 224, relating to whistleblower protection.

Chapter DWD 225, relating to family and medical leave.

The proposed Chapter DWD 223, relating to public employee safety and health, also contains the same provisions on fax and email communications and recording with digital equipment.

Chapters DWD 218, 224, and 225 are amended to clarify that the respondent does not need to file an answer for an appeal of an initial determination of no probable cause.

Summary of factual data and analytical methodologies. Sections 16.009 (5) (d), 46.90 (4) (b), 50.07 (3) (b), 146.997, 21.80 (7) (b), and 106.56, Stats., provide that complaints under these provisions shall be processed in the same manner as fair employment complaints. Chapter DWD 218, relating to fair employment, is amended for clarity to include these references.

Section 101.055 (8), directs the Equal Rights Division to process complaints of retaliation under the public employee health and safety law. There is no statutory directive on how these complaints are to be processed, and the Equal Rights Division does not currently have a rule that covers these complaints. A new rule chapter is created to provide clear authority for the division's procedures on processing the complaints.

Chapter DWD 220, relating to fair housing, is updated to reflect a change in 2005 Wisconsin Act 25.

All rules administered by the Equal Rights Division are amended to provide procedures on filing documents by fax and email and to allow digital recordings of hearings. These changes reflect technological advances.

Comparison with federal law. Employment discrimination complaints may be filed by mail or in person at the nearest Equal Employment Opportunity Commission office. Fair housing complaints may be filed by online form, telephone, or mail with the Department of Housing and Urban Development. Complaints regarding disability discrimination against students in a post-secondary institution may be filed with the Office of Civil Rights in the Department of Education by online form, mail, fax, or in person. The Office of Civil Rights encourages customers to use e-mail or fax to communicate with staff when possible. Complaints regarding reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 may be filed with the Department of Labor Veterans Employment and Training Service in writing using a prescribed paper form or an electronic form.

Comparison with rules in adjacent states. Michigan. A complaint may be filed by personal delivery or by mail. The case in support of a discrimination charge is presented at the hearing by a department attorney or a member of the department's staff, or upon notice from the claimant, by the claimant or his or her counsel subject to the right of the department to present other or additional evidence or argument. Verbatim stenographic notes of the hearing are made and kept by a competent reporter.

Iowa. Any document, including a complaint of discrimination, may be filed in person or by mail, fax, or courier service. The case in support of a discrimination complaint is presented at the hearing by a commission attorney.

Illinois. The Department of Human Rights receives complaints and conducts an investigation to determine whether there is probable cause. The department accepts documents served personally or by telefax, U.S. mail, or private delivery service. Hearings on discrimination complaints are conducted by the Human Rights Commission. The commission rule on filing discusses the requirements of filing documents by mail. It is not clear if other types of filing are allowed. The commission arranges for a record of the

proceedings to be made, transcribed and filed in the commission's office.

Minnesota. Filing is accomplished by delivery of the charge to the department's office. The Attorney General represents a charging party after the department determines that there is probable cause that discrimination occurred.

Effect on small business. The proposed rules may affect small businesses as defined in s. 227.114 (1), Stats., in the manner that documents may be filed in a discrimination case. No reporting, bookkeeping, or other professional skills are required for compliance with the proposed rules. The Department's Small Business Regulatory Coordinator is Jennifer Jirschele, (608) 266-1023, jennifer.jirschele@dwd.state.wi.us.

Fiscal Effect

The proposed rules have no fiscal effect.

Agency contact person. LeAnna Ware, Civil Rights Bureau Director, Equal Rights Division, Dept. of Workforce Development, leanna.ware@dwd.state.wi.us, (608) 266-1997

Written comments. The proposed rules are available at the web site <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403
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Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than June 28, 2006, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

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

Regulation and Licensing

(CR 06-014)

Ch. RL 128, relating to educational programs for auctioneers.

Transportation

(CR 06-041)

Ch. Trans 103, relating to habitual traffic offenders.

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.

Health and Family Services**(CR 03-085)**

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

Revenue**(CR 05-117)**

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

Revenue**(CR 06-001)**

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

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