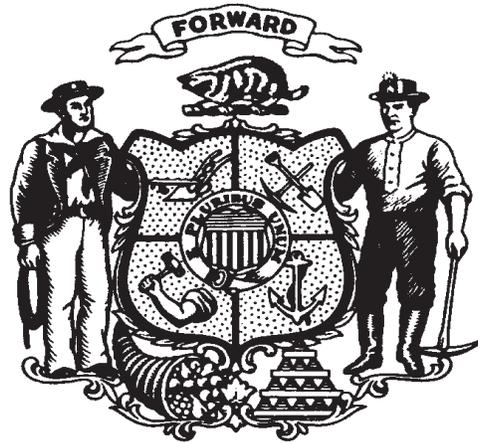


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Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health,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

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

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

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

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

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

Commerce

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

Exemption From Finding of Emergency

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

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

The Act also requires the department to assess a new fee to fund a manufactured housing rehabilitation and recycling grant program. The emergency rule establishes that fee to be approximately the same as the environmental impact fee that is no longer assessed.

Publication Date: November 29, 2005
Effective Date: December 1, 2005
Expiration Date: See section 76 (2) 2005 Wis. Act 45.
Hearing Date: January 6, 2006
 [See Notice This Register]

Elections Board

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

Finding of Emergency

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

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

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

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

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

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

Insurance

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

Finding of emergency

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

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

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

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

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

1. Rules adopted revising **ch. NR 10**, relating to the 2005 migratory game bird seasons.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: August 31, 2005
Effective Date: August 31, 2005
Expiration Date: January 28, 2006
Hearing Date: October 17, 2005

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

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

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

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

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

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

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

Finding of emergency

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

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

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.

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

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

Finding of emergency

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

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

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

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

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

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

Public Instruction (2)

1. Rules adopted revising **ch. PI 35**, relating to the private school proration process.

Finding of emergency

The department anticipates the program reaching the 15% cap in the 2005–06 school year. Because the department is required to prorate the number of spaces available at each participating private school, the prorating process must be in place as soon as possible to provide adequate notice to participating schools and parents. Further, procedures must be in place prior to the beginning of the 2005–06 school year to avoid removing pupils from private schools that have lost seats after the prorating process is completed.

Publication Date: August 1, 2005
Effective Date: August 1, 2005
Expiration Date: December 29, 2005
Hearing Date: August 31, 2005

2. Rules adopted amending emergency rules revising **ch. PI 35**, relating to prorating under the Milwaukee Parental choice Program.

Finding of emergency

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

The department anticipates the program reaching the 15% cap in the 2005–06 school year. Because the department is required to prorate the number of spaces available at each participating private school, the prorating process must be in place as soon as possible to provide adequate notice to participating schools and parents.

The rules contained in this order do not apply after December 29, 2005, unless an extension is granted under s. 227.24 (2), Stats.

Publication Date: August 9, 2005
Effective Date: August 9, 2005
Expiration Date: December 29, 2005

Technical College System Board

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

Finding of emergency

The Wisconsin Technical College System Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting an emergency is:

The 2005 Wis. Act 25 (the 2005–2007 biennial budget bill) created the training program grants under Wis. Stats. §§

20.292 (1) (eh) and 38.41. An annual appropriation of \$1,000,000 GPR in was established. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state's economic vitality and health.

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

Publication Date: October 7, 2005
Effective Date: October 7, 2005
Expiration Date: March 6, 2006
Hearing Date: January 4, 2006
 [See Notice This Register]

Transportation

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

Finding of emergency

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

Publication Date: December 1, 2005
Effective Date: December 1, 2005
Expiration Date: April 30, 2006
Hearing Date: February 13, 2006
 [See Notice This Register]

Veterans Affairs (2)

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

Exemption From Finding of emergency

The legislature has authorized the department to promulgate rules for the administration of the veterans tuition

reimbursement program under the emergency rule procedure without providing evidence of the necessity of the preservation of the public peace, health, safety, or welfare at sec. 9153 (1) of 2005 Wis Act 25.

Publication Date: August 2, 2005
Effective Date: August 2, 2005
Expiration Date: December 30, 2005
Hearing Date: October 21, 2005

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

Exemption From Finding of emergency

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

Publication Date: August 2, 2005
Effective Date: August 2, 2005
Expiration Date: December 30, 2005
Hearing Date: October 21, 2005

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

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

Finding of emergency

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

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

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of “place of employment” and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various governmental bodies. Section DWD 274.015 also provides

that the chapter does not apply to employees employed in domestic service in a household by a household.

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

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

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care

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

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

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

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

Scope statements

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

Subject

Changes relating to land surveyor education and experience requirements. These changes will clean up and clarify the existing rules and modify the course requirements for land surveyors.

Policy analysis

Objective of the rule. To update outdated language in the current rules and recognize changes in the land surveyor profession, including new coursework that has been added due to new technology. The updated language will clarify existing rules and reflect changes that have been in the profession.

Existing Policies Relevant to the Rule, New Policies Proposed and Analysis of Policy Alternatives.

Existing rules relating to land surveyor experience and education are in ss. A–E 6.03 and 6.04. Currently, a land surveyor applicant may meet the educational requirements by receiving a bachelor's degree in civil engineering. The curriculum would include no less than 24 semester credits in courses concentrating on the legal principles and technical aspects of land surveying. The proposed rule change would require no less than 16 of the 24 credits to be taken on the legal principles and technical aspects of land surveying. The applicant would also be allowed to receive up to 8 credits in certain other courses relating to surveying. These courses may include "Engineering Surveying," "Municipal Surveying," "Route Surveying," "Highway Surveying," "Topographic Surveying," "Geodetic Surveying," "Photogrammetry," "Cartography," "Construction Surveying," "Air Photo Interpretation," "Artillery Surveying," "Remote Sensing," "Geographic Information Systems" and "Land Information Systems."

Experience requirements would include a modification to allow experience to be acquired in preparing Transportation Project Plats and Condominium Plats.

Comparison with federal requirements

This is not an area which is regulated by federal law or is subject to any proposed federal legislation. The standards for state licensure are regulated by each state.

Statutory authority

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

Entities affected by the rule

Applicants for land surveyor registration.

Staff time required

400 hours.

Insurance

Subject

Objective of the rule. To establish the annual fees which participating health care providers must pay to the Injured

Patients and Families Compensation Fund as required by s. 655.27 (3) Wis. Stat., for the fiscal year beginning, July 1, 2006. The proposed rule will also include a new classification for part-time providers as authorized by the Fund Board of Governors at its February 23, 2005 meeting. In addition, the proposed rule will update the listing of provider specialties (ISO Codes) by assessment class and will establish the mediation panel fees for fiscal year 2007 commencing July 1, 2006.

Policy analysis

Existing policies are set forth in the statutes cited in the next section and in the rules themselves; a new part-time classification for providers who practice 1200 hours or less a fiscal year was approved by the Fund's Board of Governors to address the changes in the practice of medicine in the state.

Statutory authority

The statutory authority for this rule is s. 601.41 (3), 655.27 (3) (bg) and 655.61, Wis. Stat.

Staff time required

100 hours estimated state employee time to promulgate this rule; other resources will include the review and recommendation of the board's actuarial committee based on the analysis and recommendations of the fund's actuaries and the director of state courts.

Comparison with federal requirements

There is no existing or proposed federal regulation addressing any medical malpractice fund like the Wisconsin Injured Patients and Families Compensation Fund.

Entities affected by the rule

All health care provider participants in the fund as set forth in s. 655.002 (1), Wis. Stat.

Natural Resources

Subject

Objective of the rule. Amendment to ch. NR 406. The proposed rule change will implement s. 285.60 (5m), Stats., as created by 2003 WI Act 118, related to a waiver of construction permit requirements under certain circumstances.

The Department would proposed the following prerequisites when applying for a waiver:

1. The person submitting the request is required to have filed a complete construction permit application so the Department is able to make an accurate determination of the merits of the waiver request.

2. The project is required to obtain a permit under ch. NR 406 but not chs. NR 405 or NR 408.

Policy analysis

Section 285.60 (5m), Stats., as created by 2003 WI Act 118, requires the Department, by rule, to allow any person to commence construction, reconstruction, replacement or modification of a stationary source prior to issuance of a construction permit under certain circumstances. The source must demonstrate to the Department that the waiver is

necessary to avoid undue hardship. The Department is authorized to grant waiver requests on the bases specified in the rule or on a case–by–case basis. Under s. 285.60 (8), Stats., the Department may not grant a waiver if that action would conflict with the Clean Air Act.

The Department is required by Statute to act on the waiver request within 15 days after it receives the request..

Current policy does not allow for commencing construction prior to receiving a construction permit.

Statutory authority

Section 285.60 (5m) and (8), Stats.

Staff time required

Approximately 156 staff hours of time will be needed to develop the rule.

Comparison with federal requirements

Under s. 285.60 (8), Stats., the Department may not promulgate a rule under s. 285.60, Stats., that conflicts with the federal clean air act.

There is no federal requirement that would prohibit waivers for state only construction permits, those covered under ch. NR 406, so there would be no conflict with the federal clean air act if the waivers are granted only to projects which do not require a PSD or NSR e.g., (major sources or major modifications of major sources).

Environmental organizations have expressed an interest in the implementation of the construction permit waivers.

Entities affected by the rule

There are approximately 200 construction permits issued annually, and about 2000 sources listed on our air emission inventory.

Natural Resources

Subject

Objective of the rule. Amendments to chs. NR 406 and 407. The proposed rule changes will implement s. 285.60 (6) (b), Stats., as created by 2003 WI Act 118, related to exemptions for minor sources from air pollution control construction and operation permits.

Policy analysis

Section 285.60 (6) (b), Stats., requires the Department, by rule, to exempt minor sources from the requirement to obtain a construction permit and an operation permit if the emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment. Minor sources are those facilities whose air emissions are below the Clean Air Act threshold level for major sources. Department rules currently contain more than 30 specific exemption categories as well as one general exemption. The Department is evaluating how to redefine the exemptions such that only projects and facilities that have, or will have, significant environmental impact or risk are subject to permitting requirements. The operation permit general exemptions the Department is considering would only apply to facilities that are not otherwise classified as Title V sources. In addition, the construction permit exemptions would only apply to projects

that are not subject to review under Prevention of Significant Deterioration or Non–attainment New Source Review rules.

Statutory authority

Section 285.60 (6) (b), Stats.

Staff time required

Approximately 486 staff hours of time will be needed to develop the rule.

Comparison with federal requirements

Under s. 285.60 (8), Stats., the Department may not promulgate a rule under s. 285.60, Stats., that conflicts with the federal Clean Air Act.

There is no federal requirement to issue operation permits to non–title V sources whose potential to emit is less than the federal major source threshold; nor is there a federal requirement to issue construction permits to minor sources or minor modifications, although the Department’s air permit program must be sufficient to ensure that national and state ambient air quality standards are achieved. There appears to be no conflict with the federal Clean Air Act.

Entities affected by the rule

There are approximately 700 minor sources in Wisconsin which could potentially be affected by the changes in exemptions for air operation and construction permits.

Podiatrists Affiliated Credentialing Board

Subject

Continuing podiatric medical education waivers.

Policy analysis

Objective of the rule. The rule changes would accomplish two purposes. By broadening the set of circumstances under which a continuing podiatric medical education waiver may be granted, the board could grant waivers for exceptional circumstances that are not similar to prolonged illness or disability. By providing for a grace period in the initial licensure period, a full two years for completion of the continuing education credits would be assured.

Existing Policies Relevant to the Rule, New Policies Proposed and Analysis of Policy Alternatives.

The board feels its continuing education rule is not broad enough to allow the board to make discretionary decisions to waive continuing education requirements in certain instances, nor does the board allow a grace period for applicants who apply to renew a license that expires on the first expiration date after initial issuance of the license.

Comparison with federal requirements

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

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 440.035 (1), Stats.

Entities affected by the rule

Licenses, continuing education providers, the Department of Regulation and Licensing.

Staff time required

100 hours.

Submittal of rules to legislative council clearinghouse

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

Commerce

Rule Submittal Date

On December 1, 2005, the Wisconsin Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

The proposed rule amends ch. Comm 155, relating to interest on real estate trust accounts.

Agency Procedure for Promulgation

A public hearing is required and will be held January 10, 2006.

The department's Division of Housing and Community Development is primarily responsible for this rule.

Contact Information

Patti Glassburn
Housing Financial Specialist
(608) 266–8273

Educational Approval Board

Rule Submittal Date

On November 30, 2005, the Educational Approval Board (EAB) submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

The proposed rule amends s. EAB 4.06, relating to the student protection fee imposed on schools subject to EAB approval.

Agency Procedure for Promulgation

The EAB plans to adopt the proposed rule using the thirty–day notice procedure.

Contact Information

David C. Dies
Executive Secretary
608/266–1996

Insurance

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on November 29, 2005.

Subject

These changes will affect chs. Ins 6, 26 and 28, Wis. Adm. Code, relating to agent licensing procedure changes which will affect small business.

Agency Procedure for Promulgation

The date for the public hearing is January 11, 2006.

Contact Person

A copy of the proposed rule may be obtained from the WEB site at:

<http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264–8110. For additional information, please contact Robert Luck at (608) 266–0082 or e–mail at Robert.Luck@oci.state.wi.us in the OCI Legal Unit.

Natural Resources

Rule Submittal Date

On November 10, 2005, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending chs. NR 12, 16 and 17, Wis. Adm. Code.

Subject

The proposed rule relates to hound dog training and trialing on captive wild animals.

Agency Procedure for Promulgation

Public hearings are required and will be held on January 10 and 12, 2006.

The department's Bureau of Wildlife Management is primarily responsible for this rule.

Contact Information

Kurt Thiede
(608) 267–2452

Natural Resources

Rule Submittal Date

On November 10, 2005, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending ch. NR 102, Wis. Adm. Code.

Subject

The proposed rule relates to designation of waters as outstanding or exceptional resource waters.

Agency Procedure for Promulgation

Public hearings are required and will be held on January 4, 5, 11 and 12, 2006.

The department's Bureau of Watershed Management is primarily responsible for this rule.

Contact Information

Russ Rasmussen
(608) 267–7651

Natural Resources**Rule Submittal Date**

On November 10, 2005, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending ch. NR 47, Wis. Adm. Code.

Subject

The proposed rule relates to master logging certification scholarships.

Agency Procedure for Promulgation

A public hearing is required and will be held on December 12, 2005.

The department's Bureau of Forest Management is primarily responsible for this rule.

Contact Information

Jeff Barkley
(608) 264–9217

Technical College System**Rule Submittal Date**

On November 11, 2005, the Wisconsin Technical College System (WTCS) Board submitted a proposed administrative rule to the Legislative Council Rules Clearinghouse for review.

Subject

The proposed rule is to create ch. TCS 17, relating to training program grants.

Agency Procedure for Promulgation

A public hearing to consider creation of the proposed rule is scheduled for January 4, 2006.

Contact Information

I have been designated as the agency contact responsible for the development of this rule and for internal agency processing. Please contact me at 266–2449 or morna.foy@wtcsystem.edu with any questions regarding these materials.

Transportation**Rule Submittal Date**

On November 30, 2005, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending ch. Trans 102, Wis. Adm. Code.

Subject

The proposed rule relates to the time period within which a person moving to Wisconsin may operate a motor vehicle under a driver license from his or her previous state of residence.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 11, 2006.

The department's Division of Motor Vehicles is primarily responsible for this rule.

Contact Information

Julie A. Johnson, Paralegal
(608) 266–8810

Rule–making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 05–108]

(Reprinted from 11/30/05 Register)

The State of Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule related to Fertilizer and Pesticide Bulk Storage.

DATCP will hold 3 public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until February 17, 2006, for additional written comments.

Hearing Locations:

Tuesday, January 24, 2006

1 p.m. to 4:00 p.m. and 5 p.m. to 7 p.m.

Prairie Oak State Office Building

2811 Agriculture Drive

Board Room

Madison, WI 53708

Handicapped accessible

Wednesday, January 25, 2006

1 p.m. to 4:00 p.m. and 5 p.m. to 7 p.m.

DNR Headquarters (West Central Region)

1300 West Clairemont Ave.

Room 158/185

Eau Claire, WI 54701

Handicapped accessible

Thursday, January 26, 2006

1 p.m. to 4:00 p.m. and 5 p.m. to 7 p.m.

Gruenhagen Conference Center, U.W. Oshkosh

208 Osceola Street

Oshkosh, WI 54901

Wolf River Room

Handicapped accessible

Free Rule Copy

You may obtain a free copy of this rule in any of the following ways (copies will also be available at the hearings):

By mailing a request to the Wisconsin Department of Agriculture, Trade, and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, Madison, WI 53708–8911.

By e–mailing matt.laak@datcp.state.wi.us.

By calling 608–224–4518.

By visiting DATCP’s website at:

<http://www.datcp.state.wi.us/arm/agriculture/pest–fert/pesticides/accp/containment.jsp>

By visiting the Wisconsin Administrative Rules website at:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

Written Comments

You may submit written comments for the hearing record, whether or not you attend any hearing. Written comments must be received no later than February 17, 2006. You may submit written comments in any of the following ways:

By mail to Matt Laak, Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, P. O. Box 8911, Madison, WI 53708–8911.

By e–mail to matt.laak@datcp.state.wi.us.

By visiting the Wisconsin Administrative Rules website at:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>. You will need to register on the website if you wish to submit hearing comments via the website (there is no charge).

Small Business Regulatory Coordinator

DATCP’s Small Business Regulatory Coordinator is Keeley Moll. You may contact the Small Business Regulatory Coordinator in any of the following ways:

By mail to Keeley Moll, Wisconsin Department of Agriculture, Trade and Consumer Protection, Office of the Secretary, P. O. Box 8911, Madison, WI 53708–8911.

By e–mail at keeley.moll@datcp.state.wi.us.

By telephone at 608–224–5039.

Hearing Impaired Access

Hearing impaired persons may request an interpreter for these hearings. Requests must be made by Monday, January 11, 2006. You may request an interpreter in any of the following ways:

By writing to Matt Laak, Division of Agricultural Resource Management, 2811 Agriculture Drive, Madison, WI 53708–8911, telephone 608–224–4518. Alternatively, you may contact the DATCP TDD at 608–224–5058.

By mailing a request to the Matt Laak, Division of Agricultural Resource Management, Wisconsin Department of Agriculture, Trade, and Consumer Protection, 2811 Agriculture Drive, Madison, WI 53708–8911.

By e–mailing matt.laak@datcp.state.wi.us.

By calling 608–224–4518.

By contacting the DATCP TDD at 608–224–5058.

Rule Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) currently regulates fertilizer and pesticide bulk storage facilities. DATCP regulates to ensure safe storage of fertilizer and pesticides, and to prevent spills that may harm persons, property and the environment.

This rule consolidates, reorganizes and modifies current rules. This rule regulates the construction, operation and maintenance of fertilizer and pesticide bulk storage facilities. This rule requires operators to file construction plans with DATCP before constructing certain bulk storage structures. This rule also creates new construction standards for some facilities.

Statutory Authority

Statutory Authority: ss. 93.07 (1) and 94.645 (3), Stats.

Statute Interpreted: s. 94.645, Stats.

DATCP has broad authority, under s. 93.07 (1), Stats., to adopt rules to implement laws under its jurisdiction. DATCP has specific authority to regulate fertilizer and pesticide bulk storage under s. 94.645, Stats., and has rule making authority for that purpose under s. 94.645 (3), Stats.

Rule Coverage

This rule applies to commercial facilities that store unpackaged *bulk* fertilizer or pesticides. This rule does *not* apply to any of the following:

- Manure storage.
- On–farm storage, mixing or loading of fertilizer or pesticides for on–farm use (not for sale or distribution).
- Facilities that store only packaged fertilizer or pesticides.

Rule Consolidation

DATCP currently administers separate bulk storage rules for fertilizer and pesticides. Since many facilities store fertilizer *and* pesticides, this rule consolidates fertilizer and pesticide bulk storage rules in a single rule chapter. This consolidation will make it easier for storage facility operators to understand and comply with the rules.

Effect on Existing Facilities

This rule establishes some new construction standards for fertilizer and pesticide storage facilities. But the new standards apply only to structures that are constructed *or substantially altered* on or after the effective date of this rule. Routine maintenance and repair is not considered a *substantial alteration*.

Spill Prevention and Cleanup Costs

DATCP currently administers an agricultural chemical cleanup program, funded by fertilizer and pesticide license fees. Under that program, DATCP compensates facility operators for fertilizer and pesticide spill cleanup costs. Proper construction and maintenance of storage facilities can reduce spills and spill cleanup costs.

This rule does not change the agricultural chemical cleanup program. But by improving storage facility construction and maintenance, this rule will help minimize spills and spill cleanup costs. That will help to control costs under the agricultural chemical cleanup program.

Rule Contents

Construction Plans

Under current rules, fertilizer and pesticide bulk storage facilities must be constructed to certain standards. A professional engineer is often involved. However, current rules do not *require* plan review by DATCP or a professional engineer.

Under this rule, at least 21 days before an operator constructs or substantially alters a storage facility, the operator must file all of the following with DATCP:

- Plans for the construction or alteration (design specifications).
- A signed written statement by a professional engineer, certifying that the plans comply with this rule.
- The approximate date on which the operator plans to start construction.

DATCP may review and comment on plans filed under this rule, but is not required to do so. A failure to comment does not signify approval. An operator is not required to obtain

DATCP approval, but construction must conform to this rule and to the plans filed with DATCP.

An operator may not deviate from the plans without prior written notice to DATCP. DATCP may, in its discretion, inspect the construction (DATCP is not required to inspect). The operator or a person chosen by the operator must inspect the construction of new concrete structures to ensure that the construction conforms to plans filed with DATCP. The operator must file a copy of the inspection report with DATCP.

Under this rule, as under current rules, DATCP may grant a variance from applicable requirements if DATCP finds that a nonconforming feature will provide substantially equivalent protection for waters of the state. This rule clarifies that an operator must submit a variance request in writing. The request must clearly identify the proposed nonconforming feature. If the nonconforming feature affects a secondary containment structure or a mixing and loading pad, a professional engineer must certify that it will provide substantially equivalent protection for waters of the state. DATCP must grant or deny the request within 30 days, but may extend the response deadline for good cause.

Storage Facility Siting

Under this rule, as under current rules, storage and handling operations must be conducted over a mixing and loading pad or secondary containment structure designed to contain spills. Under this rule, new mixing and loading pads, secondary containment structures and bulk dry fertilizer buildings must be located at least 5 feet above bedrock and groundwater, at least 1,000 feet from any navigable lake, at least 300 feet from any navigable stream, and outside any 100–year floodplain. These siting limitations do not apply to the reconstruction, expansion or alteration of a mixing and loading pad, secondary containment structure or storage building that was in use prior to the effective date of this rule.

Water Supply Protection

Under this rule, storage facilities must comply with well setback requirements contained in chs. NR 811 and 812, Wis. Adm. Code (the state well code). All water supplies to a storage facility must be protected against back flow. Protection may include an air gap at each water supply outlet, or a back flow protection device that complies with ch. Comm 82, Wis. Adm. Code (the state plumbing code).

Storage Containers for Liquid Fertilizer or Pesticide

Under this rule, as under current rules, storage containers must be designed and constructed to prevent discharges, and must be located within a secondary containment structure. Storage containers must resist corrosion, puncture and cracking, and must be constructed of materials that do not react with stored products. Storage containers must be strong enough to hold the largest volume of product that may be stored in them.

This rule establishes new requirements related to bladder tanks, tank–in–tanks and field–erected storage containers constructed or substantially altered after the effective date of this rule. The storage containers must comply with construction standards in American Petroleum Institute standard API 650. An inspector certified under American Petroleum Institute Standard API 653 must inspect the storage containers at least once every 5 years, using inspection procedures specified by API 653.

This rule, like the current rules, requires an operator to anchor storage containers. Under this rule, anchor plates may not be embedded in the floor of a secondary containment structure unless the structure is specifically designed to handle the resulting stresses. Anchor plates may not be embedded in walls of a secondary containment structure.

Storage Container Appurtenances

This rule, like the current rule, establishes standards for storage container appurtenances such as valves, pipes, pumps, fittings, hoses and metering devices. Under this rule, as under the current rule, storage container connections must be equipped with shutoff valves. Appurtenances must be made of suitable materials, and must be designed to prevent discharges. Pipes and other appurtenances must be properly supported to prevent sagging and breakage.

Under current rules, storage containers must have gauging devices that show the volume of liquid in the containers. Liquid level gauging devices are no longer required under this rule. But *if* a storage container has a liquid level gauging device, the device must meet standards under this rule (the standards are similar to current rules). Under this rule, if a storage container has an external sight gauge, the site gauge must be anchored to the container at intervals of no more than 10 feet. This rule, like the current rules, prohibits external sight gauges on pesticide containers.

This rule establishes some new standards for appurtenances. Under this rule:

- Piping connections must be threaded, welded, fused, permanently band-clamped, or located over a mixing and loading pad or secondary containment structure (to prevent uncontained discharges from insecure connections).
- Piping or appurtenances constructed or substantially altered after the effective date of this rule may not be placed below ground, in concrete, or through any mixing and loading pad or secondary containment structure.
- An operator must annually inspect and pressure test any pipe or appurtenance installed below ground, in concrete (to ensure that there is no hidden discharge to the environment).
- An operator must annually inspect and test the joint between an appurtenance and any containment structure wall through which the appurtenance extends.

Storage Container Security

Under this rule, as under current rules, an operator must keep storage containers individually locked, or in a secure building or outdoor enclosure. Unlike current rules, this rule does not require individual locking of pesticide storage containers kept in a secure outdoor enclosure. This rule clarifies fencing requirements for outdoor enclosures.

Filling, Labeling and Venting Storage Containers

Current rules prohibit an operator from filling a storage container beyond capacity. This rule prohibits an operator from filling a storage container beyond 95% of capacity (except mini-bulk containers or containers kept at constant temperature). This rule, like current rules, requires proper labeling and venting of storage containers.

Underground Storage Prohibited

This rule, like current rules, prohibits underground storage of bulk liquid fertilizer, bulk liquid pesticide, or recovered discharges. Sumps constructed after the effective date of this rule may not be more than 2 feet deep, and may not have a capacity of more than 50 gallons (see below).

Storage Containers; Inspection and Maintenance

Current rules require weekly inspections of liquid levels and appurtenances, and monthly inspections of vents. Under this rule, an operator is no longer required to make these specific inspections (or keep records of them), but must inspect and maintain storage containers to minimize discharge risks.

Abandoned Storage Containers

Under this rule, as under the current rules, an operator must clean and rinse any abandoned storage container, and remove all appurtenances from the abandoned container. The operator must remove any underground storage container (including any sump that has a capacity of more than 50 gallons) that is abandoned.

Storage Structures; Dry Fertilizer or Pesticide

This rule expands and clarifies current requirements related to storage of dry bulk fertilizer or pesticide. Under this rule, dry bulk products must be stored in a fully enclosed building. However, an operator may store the following products outdoors:

- Packaged products that are fully enclosed in durable weatherproof packages or containers.
- Potassium chloride, or other products specifically approved by DATCP, if covered by a waterproof cover and kept on an asphalt concrete or portland cement concrete surface.

Storage structures must be constructed, inspected and maintained to withstand the pressure of stored products, to prevent discharges, and to prevent precipitation from contacting stored product. Stored product must be removed from abandoned storage facilities, and from facilities that fail to meet standards under this rule. Storage bins must be properly labeled to show fertilizer or pesticide contents.

Mixing and Loading Pads; General

Under this rule, as under current rules, fertilizer and pesticide mixing and loading must be done over a mixing and loading pad designed to catch and contain spills. This rule expands and clarifies current requirements for mixing and loading pads. Under this rule, a mixing and loading pad must comply with all of the following requirements (less rigorous requirements apply if the pad is used only for dry products):

- It must be liquid-tight.
- If constructed after the effective date of this rule, it must have a capacity of at least 1,000 gallons or 125 percent of the capacity of the largest storage container loaded or unloaded at the storage facility, whichever is less.
- It must be constructed of concrete, according to standards specified in this rule. A mixing and loading pad that was in use prior to the effective date of this rule may be constructed of asphalt concrete, but it must be replaced by a portland cement concrete pad on or before December 31, 2009.
- It must be served by a pump and storage container that can be used to recover and store spilled liquid. The pump must be self-activating or easily activated in response to a spill. The storage container must have an *available* capacity of at least 200 gallons at all times.
- It must be designed and constructed to withstand foreseeable load conditions.
- It must be protected from precipitation runoff from surrounding surfaces.
- It may not have a precipitation drain (existing drains must be permanently plugged within 6 months after the effective date of this rule).
- It must be inspected at the time of construction (if constructed on or after the effective date of this rule), to ensure that construction conforms to plans filed with DATCP.
- It must be inspected and maintained on an ongoing basis. An operator must remove a leaking mixing and loading pad unless the pad is repaired and remains liquid-tight for at least 2 years after the repair.

A mixing and loading pad is not required for rail car unloading, or for loading fertilizer or pesticide into anhydrous

ammonia nurse tanks, provided that those operations comply with alternative requirements under this rule.

Sumps

This rule expands and clarifies current rules related to sumps. Under this rule, if a mixing and loading pad or secondary containment structure drains to a sump, the sump must be all of the following:

- Liquid–tight.
- Served by a pump and storage container that can be used to recover and store spilled liquid. The pump must be self–activating or easily activated. The storage container must have an *available* capacity of at least 200 gallons at all times.
- Inspected at the time of construction (if constructed on or after the effective date of this rule), to ensure that construction conforms to plans filed with DATCP.
- Inspected and maintained on an ongoing basis. An operator must remove a leaking sump unless the sump is repaired and remains liquid–tight.

A sump constructed after the effective date of this rule must:

- Be constructed of concrete.
- Have a capacity of not more than 50 gallons.
- Be no more than 2 feet deep. The sump depth may not exceed the shortest sump width.
- Have walls and floor at least as thick, at every point, as the mixing and loading pad or secondary containment structure floor that drains to the sump.
- Form part of a continuous surface, having an area of at least 15 ft. by 15 ft. and a capacity of 250 gallons, which is free of construction and control joints. If a sump is constructed as part of a concrete mixing and loading pad or secondary containment structure, it must be constructed in a continuous concrete pour with that pad or structure.

Secondary Containment Structures; General

Under this rule, as under current rules, liquid fertilizer and pesticide storage containers must be located within a secondary containment structure. There are limited exemptions for mobile, mini–bulk and empty storage containers. This rule does not exempt ordinary double–bottom storage containers.

Under this rule, as under current rules, a secondary containment structure must be designed, constructed and maintained to contain potential discharges of liquid fertilizer or pesticide from storage containers. Under this rule, as under current rules, the capacity of the secondary containment structure must be at least equal to the sum of the following:

- 125% of the capacity of the largest storage container located within the structure, or 110% if the structure is fully covered by a roof.
- The total volume of discharged liquid that would be displaced by the submerged portions of all other storage containers, equipment or fixtures located within the structure if the structure were filled to capacity with discharged liquid.

Under this rule, a secondary containment structure must be designed to withstand the full hydrostatic head of any liquid that may be discharged to the structure. The structure must have a coefficient of permeability of not more than 1×10^{-6} cm/sec. Structure walls may not be taller than 4 feet (there are limited exceptions).

This rule, like current rules, prohibits liquid bulk pesticide storage in an outdoor secondary containment structure that also holds bulk fertilizer. Under this rule, all storage

containers must be located at least 24 inches from the walls of the secondary containment structure and at least 24 inches from each other (there are some limited exceptions).

Secondary Containment Structures; Construction Alternatives

This rule expands and clarifies construction standards for secondary containment structures. Under this rule, a secondary containment structure may consist of one of the following:

- Portland cement concrete structure. A secondary containment structure may be made of portland cement concrete. A portland cement concrete structure constructed after the effective date of this rule must be constructed according to standards specified in this rule. The operator or a person chosen by the operator must inspect the construction to ensure that construction conforms to plans filed with DATCP.
 - Block wall structure. A secondary containment structure may have concrete block walls if all of the following apply:
 - The floor is made of poured portland cement concrete.
 - The wall blocks are filled with portland cement concrete and joined with mortar.
 - The structure was in use prior to the effective date of this rule.
 - The structure is not used for more than one year after the effective date of this rule.
 - Synthetic liner. A secondary containment structure may be constructed of earth or other materials, and lined with a synthetic liner, if all of the following apply:
 - The liner meets standards specified in this rule, and is installed to manufacturer specifications. A manufacturer’s representative must supervise the installation.
 - The liner manufacturer certifies that the liner is chemically compatible with all products stored within the structure, and guarantees liner effectiveness until a specified date. The operator must remove and inspect the liner by that date, and at least once every 5 years thereafter.
 - The operator repairs and maintains the liner as necessary, according to manufacturer specifications.
 - The liner rests on a proper base and is protected from potential damage above and below, as prescribed by this rule.
 - Prefabricated basin. A secondary containment structure may consist of one or more prefabricated basins constructed of steel or rigid synthetic material if the basins meet standards specified in this rule.
 - Steel structure constructed in place. A secondary containment structure may be constructed of steel if the structure meets standards specified in this rule. Structures built after the effective date of this rule must be at least 1/2 inch thick at every point.
 - Earthen structure with earthen liner. A secondary containment structure may consist of an earthen structure with an earthen liner if all of the following apply:
 - The liner contains only fertilizer (not pesticide) storage containers and, if the structure is built after the effective date of this rule, all of the storage containers were constructed on site.
 - The liner meets specific rule requirements. The liner must be constructed of specified materials, must be at least 6 inches thick, must have a coefficient of permeability of not more than 1×10^{-6} cm/sec., and must be covered by an inorganic soil layer at least 6 inches thick. It must be maintained to prevent cracking and must be reconstructed at least once every 15 years.

- Building floor; mobile and mini–bulk containers. A building floor may serve as a secondary containment structure for mini–bulk containers, and for mobile containers stored on the floor for less than 7 days, if the building is capable of containing a discharge from those containers.

- Mixing and loading pad. A mixing and loading pad may serve as a secondary containment structure if it meets all of the requirements under this rule for a mixing and loading pad and secondary containment structure.

Tank–in–tank. A tank–in–tank system may serve as a secondary containment structure if all of the following apply:

The tanks are designed to meet the API 650 standards.

A liquid level monitoring device is installed to prevent overfilling.

The tank–in–tank is equipped with an effective leak detection system.

The leak detection system is inspected at least monthly.

If a leak were to occur, the leak must be reported to the department, and the tank be emptied and cleaned in agreement with the department conditions and inspected and repaired in compliance with API 653.

Bladder Tank. A bladder tank system may serve as a secondary containment structure if all of the following apply:

The tank is designed to meet the API 650 standard.

The bladder within the tank is at least 40 mils thick and chemically compatible with the products it is used to store.

A qualified installer installs the bladder tank.

A specially–designed shut–off valve and system is used.

A liquid level monitoring device is installed to prevent overfilling.

The bladder is protected with a soft liner.

The tank–in–tank is equipped with an effective leak detection system.

The leak detection system is inspected at least monthly.

If a leak occurs in the bladder, the leak is reported to the department, the tank is emptied and cleaned in agreement with the department conditions and the bladder repaired by a qualified person.

Secondary Containment Structures; Inspection and Maintenance

Under this rule, an operator must routinely inspect and maintain each secondary containment structure to ensure that the structure complies with this rule and does not leak. An operator must remove a leaking secondary containment structure unless the structure is repaired and remains liquid–tight.

Discharge Response

Under this rule, an operator must do all of the following whenever there is a discharge of fertilizer or pesticide at a storage facility:

- Take immediate and appropriate action to contain and recover the discharge, and to mitigate risks to public health and the environment.

- Report the discharge to the department of natural resources if a report is required under ch. NR 706 (a report is not required if the discharge is fully contained in a mixing and loading pad, sump or secondary containment structure).

If a discharge is fully contained within a mixing and loading pad, sump or secondary containment structure, the operator may recover the discharge at any time before the end of the business day, except that:

- The operator must recover discharged material from a mixing and loading pad, and rinse the pad, before allowing vehicles to drive through the discharge.

- The operator must recover liquid (including discharges, rinse water or precipitation runoff) from a mixing and loading pad, sump or secondary containment structure whenever necessary to mitigate health or environmental risks, maintain available discharge containment capacity, or prevent corrosion or instability of storage containers.

Storage, Use and Disposal of Recovered Material

Under this rule, an operator must safely use or dispose of discharges, rinsate and precipitation runoff recovered from a mixing and loading pad, sump or secondary containment structure. Use and disposal must comply with applicable federal, state and local regulations. Under this rule:

An operator may deposit recovered material into a manure storage pit if the material contains no pesticide residue.

Recovered liquid, if held by the operator pending use or disposal, must be held in a storage container that complies with this rule.

Recovered liquid may be used as fertilizer or pesticide mix water if the resulting product complies with ATCP 40 (fertilizer) or ATCP 29 (pesticide).

Recovered fertilizer material may be applied to land free of charge, or distributed free of charge for application to land (the operator must disclose fertilizer or pesticide contents to the landowner). However, any other sale or distribution of the recovered material, as a fertilizer or pesticide, must comply with ATCP 40 (fertilizer) or ATCP 29 (pesticide).

Under current rules (ATCP 35), an operator needs a DATCP permit to landspread material recovered from the environment, as part of an environmental cleanup. But this requirement does not apply to material recovered from a mixing and loading pad, sump or secondary containment structure.

Discharge Response Preparedness

Under this rule, as under current rules, an operator must have a written discharge response plan for a storage facility. The operator must keep a copy of the plan at the storage facility (and nearest local office), and must make the plan available to the department and local emergency responders upon request. The operator must keep the plan current at all times.

Under this rule, as under current rules, a discharge response plan must include all of the following:

- The name and telephone number of a responsible individual.

- A site map showing the location of each storage container or bin, and the type of fertilizer or pesticide stored in that container or bin.

- Procedures for responding to discharges at the facility.

- Procedures for using or disposing of recovered discharges.

Under this rule, a discharge response plan must also include all of the following:

- The Wisconsin spill reporting number (1–800–943–0003).

- A DATCP contact number.

- The names and telephone numbers of 2 local excavation contractors and 2 local earth hauling contractors.

- Procedures for responding to discharges from mobile containers shipped from the facility.

Under this rule, as under current rules, an operator must have personnel, equipment and supplies available for

discharge responses. Equipment must include pumps, recovery containers and personal protective equipment. Personnel must be trained in emergency response procedures.

Transporting Bulk Fertilizer or Pesticide

This rule creates new requirements related to the transportation of bulk fertilizer and pesticides by a storage facility operator. Under this rule:

- An operator must transport bulk fertilizer and pesticides in a manner that prevents reasonably foreseeable and preventable hazards to persons, property and the environment.
- Mobile containers must be securely anchored to transport vehicles. Other equipment on the transport vehicle that could come in contact with the mobile container must also be securely anchored to the vehicle.
- Mobile containers must be protected from damage and unauthorized access.
- An operator may not transport bulk fertilizer or pesticides in visibly broken, damaged or improperly sealed containers.

Environmental Assessments

Under this rule, an operator must check for possible environmental contamination whenever a mixing and loading pad, sump or secondary containment structure leaks, is removed, or remains out of service for over 5 years:

As part of the environmental assessment, the operator must sample and analyze soils, groundwater and other media, as necessary, to determine the existence, nature and scope of possible contamination. The operator must report the results of the environmental assessment to DATCP.

Recordkeeping

Under this rule, as under current rules, an operator must keep records related to a storage facility. This rule modifies current record keeping requirements. Under this rule, an operator must keep records related to all of the following:

- Required API 653 inspections of bladder tanks, tank-in-tanks, and large storage containers constructed on-site (inspections, by a certified inspector, are required during construction and every 5 years after construction).
- Required pressure tests of buried or embedded piping.
- Required inspection and maintenance of storage containers and structures (this rule requires an operator to inspect and maintain storage containers and structures, as necessary, to maintain compliance with this rule).

This rule eliminates current record keeping requirements related to the following activities:

- Annual inventory reconciliation (this rule repeals annual inventory reconciliation requirement).
- Weekly inspections of liquid levels and appurtenances (this rule repeals weekly inspection requirements).
- Discharges to the environment (an operator must report discharges to DNR per DNR rules, and must provide DATCP with the operator's environmental assessment related to any leaking storage container).

Under this rule, an operator must:

- Keep API 653 inspection records for as long as the operator owns or operates the storage facility.
- Keep records of pressure tests, inspections and maintenance for at least 3 years.
- Keep the records at the storage facility or nearest local office.
- Make the records available to DATCP for inspection and copying upon request.

Real Estate Sale or Lease; Disclosure

Under this rule, an operator must do all of the following before the operator sells or leases storage facility real estate for a different use (this rule does not limit other disclosures that may be required under other applicable law):

- Notify DATCP of the impending sale or lease.
- Disclose to the purchaser or lessee that the real estate has been used as a storage facility.

Inspection and Enforcement

DATCP may inspect a storage facility for compliance with this rule, and may take enforcement action as necessary. Under current state statutes, DATCP is authorized to do all of the following as necessary:

- Conduct investigations and issue warning notices.
- Inspect facilities, and collect product and environmental samples for testing.
- Inspect and copy records.
- Issue subpoenas and investigative demands.
- Issue orders to correct violations of this rule. DATCP may issue orders on a summary basis, without prior notice or hearing, if necessary to protect public health or the environment.
- Seek court action to enforce this rule or a DATCP order. This may include actions for injunction, or for a civil forfeiture of up to \$1,000 per violation (each day of violation constitutes a separate offense). DATCP may also seek criminal penalties if appropriate (fine of up to \$200 and 6 months in jail, or both).
- Deny, suspend, revoke the operator's license as a fertilizer manufacturer or distributor or pesticide application business.

- Order an operator to investigate and clean up environmental contamination resulting from a discharge. DATCP may order removal of structures, as necessary, for the environmental cleanup.

- Deny reimbursement of environmental cleanup costs for which the operator would otherwise be eligible (for example, if a discharge occurs because of an intentional or grossly negligent violation of storage rules).

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP will request permission from the attorney general and revisor of statutes to incorporate the following standards by reference in this rule, without reproducing the complete standards in this rule:

- American Petroleum Institute standard 650, *Welded Steel Tanks for Oil Storage*, 10th edition (September 1, 2003).
- American Petroleum Institute standard 653, *Tank Inspection, Repair, Alteration, and Reconstruction*, 3rd edition (December 1, 2001).
- Wisconsin Minimum Design Standards for Concrete Agrichemical Containment (February, 2005), written by Professor David W. Kammel, Department of Biological Systems Engineering, University of Wisconsin–Extension.

Copies of these standards will be kept on file with DATCP, the secretary of state and the revisor of statutes. Copies are not reproduced in this rule.

Fiscal Estimate

This rule will increase DATCP costs by approximately \$24,400 per year. Additional staff time will be needed to train storage facility operators, review and comment on storage facility construction plans, and monitor compliance with construction standards and other requirements. This rule will not generate any new revenue to cover the increased costs, so

DATCP will need to absorb the increase at the expense of other program activities. A complete fiscal estimate is attached.

This rule does not increase industry fees. By minimizing agricultural discharges to the environment, this rule may limit the long–term growth of reimbursement claims under the agricultural chemical cleanup program. That would have a positive effect on DATCP’s agricultural chemical cleanup fund, which is financed by industry fees. However, DATCP cannot accurately estimate the impact at this time.

Business Impact

This rule applies to commercial operators who store unpackaged bulk fertilizer or pesticides for sale or distribution. Many of these operators are “small businesses.” A complete small business analysis (“initial regulatory flexibility analysis”) is attached.

This rule does *not* apply to any of the following:

- Manure storage.
- On–farm storage of fertilizer or pesticide for on–farm use (not for sale or distribution).
- Facilities that store only packaged fertilizer or pesticides.

This rule establishes some new construction standards for fertilizer and pesticide storage facilities. These new standards apply to structures that are constructed *or substantially altered* after the effective date of this rule. This rule will not have a significant impact on an existing facility unless the operator *substantially alters* structures in that facility. Routine maintenance and repair is not considered a *substantial alteration*.

Under this rule, an operator must have construction plans reviewed by a professional engineer, and must submit the construction plans for discretionary review by DATCP. This may entail some additional costs for some operators, but will help prevent much more costly design and construction errors. This rule does *not* require DATCP pre–approval of new construction or alterations. This rule allows design flexibility, consistent with minimum standards.

Improved design and construction of storage facilities will minimize environmental contamination and costly cleanups that pose a large financial risk to storage facility operators. Environmental cleanup costs are typically much higher than preventive design and construction costs. Reduction of cleanup costs will also minimize financial demands on the industry–funded agricultural chemical cleanup program.

This rule reduces the overall recordkeeping burden for affected businesses (it adds some recordkeeping requirements but eliminates others). Consolidation of current fertilizer and pesticide bulk storage rules will make the rules easier to read, understand and implement.

DATCP has worked with University of Wisconsin–Extension to spell out basic design standards for concrete structures, so that engineering firms will not have to design those structures from scratch. That will reduce design costs for facility operators.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Environmental Impact

This rule will help prevent environmental damage from fertilizer and pesticide spills at bulk storage facilities. This rule will have no significant adverse environmental impact. An environmental assessment is attached.

Federal and Surrounding State Programs

Federal Programs

There are no comparable federal programs to regulate the storage of bulk fertilizer or pesticides (Wisconsin is a national leader).

Michigan

Michigan’s bulk fertilizer and pesticide storage rules are similar to Wisconsin’s. Michigan requires mixing and loading pads and secondary containment structures, but does not have minimum design or construction standards for those structures (nor does it require professional engineering review of design specifications).

Minnesota

Minnesota’s bulk *pesticide* storage rules are similar, in many respects, to Wisconsin’s. Minnesota has not promulgated bulk *fertilizer* storage rules, but has been enforcing proposed rules that are similar to Wisconsin’s. Minnesota requires mixing and loading pads and secondary containment structures and has minimum design and construction standards for those structures. However, Minnesota does not require professional engineering review of design specifications.

Indiana & Iowa

Indiana and Iowa have rules that are similar to each other, and somewhat similar to Wisconsin’s. They require mixing and loading pads and secondary containment structures, but they do not set minimum design or construction standards or require professional engineering review of design specifications.

Illinois

Illinois has rules that are somewhat similar to Wisconsin’s. Illinois requires mixing and loading pads and secondary containment structures, and Illinois also sets minimum design or construction standards or requires professional engineering review of design specifications.

Notice of Hearing

Commerce (Fee Schedule, Ch. Comm 2)

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.9205 (3), 101.9208 and 101.9213 (8), Stats., as amended by 2005 Wisconsin Act 45, and s. 227.24 (4), Stats., the Department of Commerce will hold a public hearing on the emergency rule under section Comm 2.33 (5), relating to manufactured home certificate of title fees.

The public hearing will be held as follows:

Date and Time:

Friday, January 6, 2006

10:00 a.m.

Location:

Room 3C, Thompson Commerce Building

201 West Washington Avenue

Madison

Interested persons are invited to appear at the hearing and present comments on the emergency rule. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until January 13, 2006, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to

Ronald Acker, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at racker@commerce.state.wi.us.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis Prepared by the Wisconsin Department of Commerce

Analysis of Emergency Rule

1. Statutes Interpreted.

Sections 101.9205 (3), 101.9208 and 101.9213 (8), Stats., as amended by 2005 Wisconsin Act 45

2. Statutory Authority.

Sections 101.9205 (3), 101.9208 and 101.9213 (8), Stats., as amended by 2005 Wisconsin Act 45.

3. Related Statute or Rule.

Section 101.19, Stats.

4. Explanation of Agency Authority.

Sections 101.9205 (3), 101.9208 and 101.9213 (8), Stats., as amended by 2005 Wisconsin Act 45, require the department to establish, by rule under section 101.19, Stats., the respective fees for the administration and enforcement of the manufactured homes program activities required under those sections.

5. Summary of Rule.

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

The Act also requires the department to assess a new fee to fund a manufactured housing rehabilitation and recycling grant program. The emergency rule establishes that fee to be approximately the same as the environmental impact fee that is no longer assessed.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations.

There is no existing or proposed federal regulation that addresses the Safety and Buildings Division's fees for the administration and enforcement of the manufactured homes program activities required under sections 101.9205 (3), 101.9208 and 101.9213 (8), Stats.

7. Comparison with Rules in Adjacent States.

The emergency rule addresses the Safety and Buildings Division's fees unique to the administration and enforcement of the department's manufactured homes program. Adjacent states also assess fees for the administration and enforcement of their manufactured home programs as follows.

Illinois: Fees are charged for a plan review, seal, code compliance certificate, and plant inspection.

Iowa: Fees are charged for an installation seal, installer certification, and home inspection.

Michigan: A fee is charged for a certificate of ownership.

Minnesota: Fees are charged for a construction seal, installation seal, and temporary installation certificate.

8. Summary of Factual Data and Analytical Methodologies.

There were no factual data or analytical methodologies used to develop the emergency rule.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report.

The emergency rule should have a minimal effect on small business. There were no supporting documents used to determine the effect on small business, and an economic impact report was not prepared.

The emergency rule and an analysis of the emergency rule are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, or Email at rward@commerce.state.wi.us, or at telephone (608) 266–8741 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The rule will affect any business that submits an application to the department for a certificate of title for a manufactured home.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

There are no reporting, bookkeeping or other procedures required for compliance with the rule.

3. Types of professional skills necessary for compliance with the rules.

There are no types of professional skills necessary for compliance with the rule.

4. Rules have a significant economic impact on small businesses.

No. Rules not submitted to Small Business Regulatory Review Board

Fiscal Estimate

The rule will have no fiscal effect on the department, local government or the private sector.

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

Notice of Hearing
Commerce
(Housing Assistance, Chs. 150 – 155)
[CR 05–110]

NOTICE IS HEREBY GIVEN that pursuant to s. 452.13 (5), Stats., as amended by 2005 Wisconsin Act 25, the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 155, relating to interest on real estate trust accounts.

The public hearing will be held as follows:

Date and Time: Tuesday, **January 10, 2006**

1:00 p.m.

Location: Room 3C, Thompson Commerce Center
 201 West Washington Avenue
 Madison

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until January 17, 2006, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Ronald Acker, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at racker@commerce.state.wi.us.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis Prepared by the Wisconsin Department of Commerce

1. Statutes Interpreted.

Section 452.13 (5), Stats., as amended by 2005 Wisconsin Act 25.

2. Statutory Authority.

Section 452.13 (5), Stats., as amended by 2005 Wisconsin Act 25.

3. Related Statute or Rule.

None.

4. Explanation of Agency Authority.

Section 452.13 (5), Stats., as amended by 2005 Wisconsin Act 25, requires the department to promulgate rules necessary to administer section 452.13, Stats.

5. Summary of Rule.

Currently, banks and lending institutions submit a statement and remit the interest from an interest bearing real estate trust account (IBRETA) to the department in any format and at any time of the year. The proposed rules require the submittal of the IBRETA information on a standardized form and by a specific date each year.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations.

There is no existing or proposed federal regulation that addresses the submittal of the IBRETA information to the department.

7. Comparison with Rules in Adjacent States.

Minnesota

The Wisconsin IBRETA statute was modeled after the Minnesota statute, and as a result the two statutes are quite alike. In Minnesota, each real estate broker is required to deposit all client funds, inferred to include at least earnest money and other down payments, into an interest–bearing trust account. As in Wisconsin, it is the responsibility of the financial institution, not the broker, to pay the interest, less transaction costs, to the state. The financial institution must also submit a statement including the name of the broker, the rate of interest, the amount of service charges deducted, and the account balance for the period.

The method of collection and disbursement of these funds differs slightly. In Minnesota, the interest accruing to these accounts is paid to the Commissioner of Finance and deposited in the Housing Trust Fund account. The Housing Trust Fund is managed by the Minnesota Housing Finance Agency (the equivalent of WHEDA) and consists of funds from these interest–bearing accounts along with other state funds, gifts, grants, donations, and other agency monies. The funds in the Housing Trust Fund account are used to support low–income housing in the state by providing loans or grants for the development, construction, acquisition, preservation, and rehabilitation of low–income rental housing, for the operating costs of low–income or supportive housing, and for rental assistance. Funds from the housing trust fund account may only be used to benefit persons and families with income less than 60 percent of the median income, and 75 percent of these funds must be used for the benefit of persons and families with income less than 30 percent of the median income for a defined seven county area. These funds may also be used to benefit households receiving section 8 vouchers.

Receipts from the real estate brokerage accounts have varied greatly since the program’s inception in 1989. Below is a table of receipts by year for the past ten years. The figure for 2005 has been estimated based on receipts through March, 2005. In general, these receipts are comparable to those of the Wisconsin IBRETA program.

1996	1997	1998	1999	2000
\$386,677	\$399,527	\$419,028	\$412,398	\$376,645

2001	2002	2003	2004	2005
\$421,598	\$370,564	\$274,928	\$221,305	\$300,503

Iowa

The state of Iowa also requires that brokers deposit all money belonging to others, including receipts from property management, rental or lease, advanced fee, or earnest money contracts, into a trust account. Interest accruing to these accounts, less services charges, is to be remitted to the Iowa Department of Economic Development. It is the responsibility of the broker, as opposed to the financial institution as in Wisconsin and Minnesota, to see that the interest is remitted. Interest is remitted quarterly along with a Real Estate Interest Remittance Form and a copy of the bank statement.

Funds received by the Department of Economic Development are deposited in the Local Housing Assistance Fund. These funds are used for housing programs but are not limited to projects that benefit low–income households. The Iowa Department of Economic Development reports that in recent years these funds have amounted to roughly \$200,000. There has been a decline in the amount of funds received in recent years as a result of both low interest rates and a provision in Iowa law that permits brokers or clients to keep the interest on such accounts if specified in the contract.

Michigan

Michigan does not require brokers to deposit client funds into interest-bearing trust accounts. The Michigan statutes say that a broker may deposit such funds into an interest-bearing account and that the interest accrued by this account should be handled according to the contract between the broker and the client.

Illinois

Illinois similarly does not require brokers to deposit client funds into interest-bearing trust accounts. On the contrary, Illinois requires that brokers deposit escrow funds, meaning earnest money and security deposits, in non-interest-bearing accounts except in cases where the principals specifically require otherwise. In the case of an interest-bearing account, the recipient of the interest must be specified in the contract between the principals.

8. Summary of Factual Data and Analytical Methodologies.

There were no factual data or analytical methodologies used to develop the proposed rules.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report.

The proposed rules should have a minimal effect on small business. There were no supporting documents used to determine the effect on small business, and an economic impact report was not prepared.

SECTION 1. Comm 155.06 is repealed and recreated to read:

Comm 155.06 Statement. The information required under s. 452.13. (2) (e) 2., Stats., shall be submitted annually by February 1, for the previous calendar year, to the department on form CDH–10829. One report covering the aggregate accounts at a depository institution shall be submitted.

Note: Copies of form CDH–10829 are available at no charge from the Department of Commerce, PO Box 7970, Madison, WI 53707–7970, or by telephone at 608/266–8273, or on the Internet at www.commerce.wi.gov/CD.

The proposed rules and an analysis of the proposed rules are available on the Internet at the Housing and Community Development Division Web site at www.commerce.wi.gov/CD. Paper copies may be obtained without cost from Ronald Acker, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, or Email at racker@commerce.state.wi.us, or at telephone (608) 267–7907 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The rules will affect any bank or lending institution that submits a statement and interest to the department under the interest bearing real estate trust account (IBRETA) funding program.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

The rules require the submittal of a statement and interest from an IBRETA to the department on a standardized form and by a specific date each year.

3. Types of professional skills necessary for compliance with the rules.

There are no types of professional skills necessary for compliance with the rules.

4. Rules have a significant economic impact on small businesses.

No

Rules not submitted to Small Business Regulatory Review Board.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate

The proposed rules have no effect on revenues or costs for state or local government in the administration and enforcement of chapter Comm 155.

The proposed rules have no fiscal effect on the private sector.

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

Notice of Proposed Rule Educational Approval Board [CR 05–112]

NOTICE IS HEREBY GIVEN That pursuant to Sections 38.50 (2), (3), (10) (c) 4. & (cm), and 227.11 (2), *Wis. Stats.*, and interpreting Sections 38.50 (2), (3), (7) and (10), *Wis. Stats.*, and according to the procedure set forth in s. 227.16 (2) (e), *Wis. Stats.*, the Educational Approval Board (EAB) will adopt the following rule as proposed in this notice, without public hearing unless, within 30 days after publication of this notice **December 15, 2005**, the EAB 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 representative of a farm, labor, business or professional group which will be affected by the rule.

Analysis Prepared by the Educational Approval Board

Rule Analysis

Under s. EAB 4.06, schools regulated by the EAB are assessed a student protection fee. The amount of the fee is currently based on a rate of \$0.50 per \$1,000 of adjusted gross annual school revenue as reported by the schools. These fees are deposited into an appropriation under s. 20.292 (2) (gm) and are used to indemnify certain persons suffering loss from such events as a catastrophic school closure.

This proposed rule would allow the EAB to assess a student protection fee at a rate the board determines necessary to protect the viability of the appropriation, not to exceed an amount of \$10,000 for any individual school and only if the balance is less than \$500,000. The EAB has expressed concern about being able to fulfill its statutory obligation of protecting students in the event of a catastrophic school closure.

Because the fund balance is currently less than \$500,000, the proposed rule would give the EAB the authority to assess a fee at a rate higher than the current rate of \$0.50 per \$1,000. However, the rule does not require the board to assess the higher rate, and once the fund balance is in excess of \$500,000, the board would be specifically prohibited from

assessing a higher fee. In addition, the EAB would be limited in assessing any individual school a student protection fee that exceeds \$10,000.

Text of Rule

SECTION 1. EAB 4.06 (2)(b) is amended to read:

EAB 4.06 (2)(b) The fee shall be based on a rate of \$0.50 per \$1,000 of adjusted gross annual school revenue as reported in accordance with ss. EAB 4.01 (4) and 4.10 (2) (d), or if the appropriation balance of s.20.292 (2)(gm) is less than \$500,000, a fee determined by the board to protect the viability of the appropriation under s.20.292 (2)(gm), but not to exceed \$10,000 for an individual school.

Initial Regulatory Flexibility Analysis

The potential impact of this rule on small businesses is limited to the extent that such businesses meet the statutory definition of a school and are subject to the EAB approval. The EAB currently approves 140 for–profit and non–profit postsecondary schools. These schools consist of technical, career, distance–learning, and degree–granting institutions that offer more than 600 degree and non–degree programs to over 30,000 Wisconsin adults annually. Typical programs includes truck driving, massage therapy, home inspection, teacher licensure, IT certifications, CAD drafting, as well as traditional bachelor and master degrees.

Fiscal Estimate

At the present time, the student protection fund appropriation contains \$79,582. Based on reported school revenues for the 2006 renewal year, it is estimated that the FY 06 fund balance will increase to approximately \$141,300 as a result of the standard fee assessment. This increase is based on total reported school revenues of approximately \$123.5 million.

In addition, provisions contained in the 2005–07 biennial budget (2005 Wisconsin Act 25) will transfer \$250,000 of retained earnings from the EAB's general operating budget into the appropriation on June 30, 2006. After the transfer, the estimated balance for the student protection fund will be \$391,300.

Because of the permissive nature of the proposed rule order, it is not possible to determine the fiscal effect. Based on a FY 06 fund balance of \$391,300, the EAB would not be able to assess more than \$108,700 before the \$500,000 cap is reached. However, the EAB has indicated that its primary intent is to address a situation in which the balance falls below the \$500,000 due to a catastrophic school closure. In addition, no one school could be assessed more than \$10,000. To gain some insight about how the proposal might affect an individual school, one should consider the student protection fees assessed in 2005 totaled \$55,746, ranging from no fee to \$9,941. While the average fee was \$446, the median fee was only \$58.

Copies of the Rule and Contact Person

Questions and requests for copies of the proposed rule should be directed to:

David C. Dies
Educational Approval Board
30 W. Mifflin Street, 9th Floor
P.O. Box 8696
Madison, Wisconsin 53708
608/266–1996

Notice of Hearing Insurance [CR 05–111]

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting ch. Ins 6, Wis. Adm. Code, relating to agent's licensing procedure changes which will affect small business.

Hearing Information

Date: **January 11, 2006**

Time: 10:00 a.m., or as soon thereafter as the matter may be reached

Place: OCI, Room 227, 125 South Webster St 2nd Floor, Madison, WI

Written comments or comments submitted through the Wisconsin Administrative Rule website at:

<http://adminrules.wisconsin.gov> on the proposed rule will be considered. The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in this Notice of Hearing.

Written comments should be sent to:

Robert Luck
Legal Unit – OCI Rule Comment for Rule Ins 6
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707–7873

Summary of Proposed Rule & Fiscal Estimate

For a summary of the rule see the analysis. There will be a state or local government fiscal effect. The full text of the proposed changes, a summary of the changes and the fiscal estimate are available at the OCI website (see below).

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected:

Insurance agents

b. Description of reporting and bookkeeping procedures required:

None beyond those currently required.

c. Description of professional skills required:

None beyond those currently required.

OCI Small Business Regulatory Coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266– 7843 or at email address Eileen.Mallow@oci.state.wi.us

Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet WEB site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Services Section, OCI, at: Inger.Williams@OCI.State.WI.US, (608) 264–8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707–7873.

Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

1. Statutes interpreted: ss. 600.01 and 628.04, Stats.
2. Statutory authority: ss. 601.31 (m), 601.41 (3), 601.42, 628.04, 628.10 and 628.11, Stats.

Note: OCI is submitting a Technical Bill that changes the procedure for licensees that don't pay fees or complete continuing education requirements and the relaxed reinstatement requirements. If this bill has not been signed into law prior to OCI submitting the rule to the legislature, OCI will modify the procedures to conform to existing law and the existing rule. The billing and CE due dates will change regardless of whether the Technical bill is enacted.

3. Explanation of the OCI's authority to promulgate the proposed rule under these statutes:

These statutes permit the commissioner of insurance to set standards by for prelicensing education, continuing education, agent fees and other procedural requirements of licensing. These changes change the existing procedures which have been in effect for many years. They do not attempt to extend the commissioner's authority to areas not previously regulated by the existing rules.

See the Note in item #2 above relating to the OCI Technical bill.

4. Related Statutes or rules:

None.

5. The plain language analysis and summary of the proposed rule:

These changes attempt to move OCI to the NAIC model standards for licensing producers. In May of 2006, OCI is also converting the licensing software used from "COSMOS" to "SIRCON" requiring certain changes.

In addition, OCI is introducing a Technical bill which will change certain requirements needed to implement the NAIC standard and the conversion to SIRCON. If this OCI Technical bill is not enacted, certain provisions of these changes would have to be modified. These modifications would be done before the rule is sent to the legislature for the review period. The modifications would deal mainly with the revocation of licenses for non payment of fees or CE non compliance and the relaxed reinstatement requirements.

Fee and CE Reporting Changes

The NAIC model has renewal billings and continuing education ("CE") compliance due based on the agents month and year of birth. In order to change from our current system of billing and requiring CE compliance once every two years, there needs to be a transition period. This proposed transition would ensure that all agents pay the same overall fees and require 12 CE credit hours per year. The following is a description of how the new billing/CE procedures would be transitioned:

Year	Notice Type	Recipients	Notice Dates
2005	CE=24 credits	All	Current System: Notice sent 12/04, suspended 2/05 and revoked 4/05
2006	Old Fee	All	Current System: Notice sent 12/05, suspended 2/06 and revoked 4/06
2007	50% New Fee CE=24 credits	Odd year birth date Resident Odd year birth date	For future notices (both fee & CE) –Send notice at least 60 days prior to the 15th day of the birth month –Revoke on 15th day of the birth month
2008	New Fee CE=36 credits	Even year birth date Resident Even year birth date	
2009	New Fee CE=24 credits	Odd year birth date Resident Odd year birth date	

2010 New Fee Even year birth date
CE=24 credits Resident Even year birth dates

(Repeat 2009 and 2010 for odd and even years in the future)

The fees are being raised slightly, but still far below what most states require. These increases will partially cover some additional costs of the new system, the costs of electronic processing of the renewals, the cost of paying renewal fees with a credit card and certain other fees which are being deleted in the OCI technical bill being introduced in the legislature. The revocation referenced above and relaxed reinstatement provisions depend on the passage of the OCI technical bill. If this does not pass, the current system of suspending and revoking 60 days later as required in s. 628.10, Stats., would continue.

The changes would require all insurers to do appointments and termination of agents on line. Currently, most insurers utilize this method.

The SIRCON system will automatically check the current status of nonresident agents licensing in their home state, alleviating the need for agents to provide a paper Certificate of Licensing. In addition, the Department of Justice crime checks will be done electronically. This will eliminate another paper item that applicants currently have to obtain and bring to the testing site.

Prelicensing Education Changes

Other changes clarify how the hours for prelicensing education are calculated and expand the exemptions for prelicensing education for agents who hold certain professional designations.

Programs that offer courses will be required to notify OCI electronically of all agents who have taken any course, eliminating the paper certification now required with the agent's application. Most providers that offer prelicensing education also offer continuing education and currently provide the continuing education information electronically. The requirement to also provide the prelicensing education information electronically should not be a burden for the providers.

Continuing Education ("CE") Changes

OCI would require that 3 hours of the 24 CE hours needed every two years be devoted to the ethics of insurance. This exposure to discussions of ethics would hopefully inform or expand agent's views of how insurance should be marketed. Programs that offer courses will be required to notify OCI electronically of all agents who have taken any course, eliminating the paper notifications. Most providers do this already.

In the past, there have been relatively few "correspondence courses" approved for CE. These changes would specifically allow correspondence courses and set some criteria for approval.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There is no similar federal regulation covering these activities. Insurance is generally regulated on the state level with the National Association of Insurance Commissioners producing model procedures for states.

7. Comparison of similar rules in adjacent states as found by OCI:

Iowa:

Application fees: \$50 per line

Renewal fees: \$100, triennially on April 1

CE: 36 hours triennially due December 31 prior to license renewal

Illinois: 215 ILCS 5, Illinois Insurance Code

Application fees: \$180 for residents & \$250 for nonresidents

Renewal fees: \$180 for residents & \$250 for nonresidents biennially on registration issuance date

CE: 30 hours biennially due on registration issuance date

Minnesota: Statutes chapter 60K and Rules chapter 2795

Application fees: \$50 per line

Renewal fees: \$50 per line, biennially on October 31

CE: 30 hours biennially due on October 31

Michigan:

Application fees: \$10 application fee per line plus \$60 testing fee per line

Renewal fees: Perpetual license

CE: 30 hours biennially due on individual compliance date based on last digit of the social security number and the first letters of producer's last name

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

These changes bring Wisconsin into conformance with the system used by many other states and preferred by the NAIC for uniformity. Once all states start billing in the agent's birth month, agents who are licensed in more than one state will have a better idea of when fees and continuing education is due in the various states.

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

The small increase in fees will offset increased costs by OCI incurred for using on-line renewal and allowing credit card payment of fees. Agents using these services will not pay additional fees to use them with the costs being included in the renewal fee.

In addition, in the OCI technical bill, if passed, will eliminate certain existing fees for agent letters of certification, agent letters of clearance, replacement copies of new licenses and issuing of duplicate licenses. The net effect of all changes, including those in the OCI technical bill, will end up with no or a very small increase in revenue to OCI.

It is difficult to determine agent savings from reduced paperwork in the licensing process but there clearly is a reduction in cost. Similarly, agents licensed in other states will benefit from more uniform billing and renewal procedures but it is difficult to place a single dollar amount on this type of benefit.

10. If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule:

These changes will not have a significant fiscal effect on the private sector.

11. A description of the Effect on Small Business:

This rule will have an effect on small businesses but will not be a significant impact on small businesses. Many insurance agents are small businesses. This rule would minimally raise a biennial fee by \$5 per year for resident agents and \$10 per year for nonresident agents. These increases are very small. In addition, the increased fees will cover the additional cost of agents being able to renew on-line and pay with a credit card.

The changes promote efficiency by eliminating paperwork that agents currently are required to complete, mainly in the licensing process.

For agents that are licensed in other states, the new billing procedures are uniform with the direction others states are going. After all states adopt the new procedures, Wisconsin agents will be able to deal with licensing issues in all states on a more uniform basis.

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the WEB sites at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: Inger.Williams@OCI.State.WI.US

Address: 125 South Webster St – 2nd Floor
Madison WI 53702

Mail: PO Box 7873, Madison WI 53707-7873

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

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Robert Luck

Legal Unit – OCI Rule Comment for Rule Ins 6

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Street address:

Robert Luck

Legal Unit – OCI Rule Comment for Rule Ins 6

Office of the Commissioner of Insurance

125 South Webster St – 2nd Floor

Madison WI 53702

WEB Site: <http://oci.wi.gov/ocirules.htm>

Notice of Hearing Technical College System [CR 05-107]

NOTICE IS HEREBY GIVEN that pursuant to s.38.41, Stats., and interpreting ss. 20.292 (1) (eh) and 38.41, Stats., the Wisconsin Technical College System Board will hold a public hearing to consider creation of rules relating to training program grants.

Hearing Information

Date: **January 4, 2006**

Time: 1:30 p.m.

Location: Wis. Technical College System Office
345 West Washington Avenue
First Floor Meeting Room
Madison, Wisconsin

Analysis Prepared by the Wisconsin Technical College System Board

1. Statutes interpreted: Wis. Stats. s. 20.292 (1) (eh) and s. 38.41.

2. Statutory authority: Wis. Stats. s. 38.41.

3. Explanation of agency authority: Section 38.41 (4), Stats., authorizes the technical college system board to promulgate rules to implement and administer the awarding of grants to technical college district boards to provide skills training or other education related to the needs of business.

4. Related statute or rule: none

5. Plain language analysis: No grant award criteria are specified in statute. The purpose of the rule is to implement and administer the awarding of training program grants to technical college districts to provide skills training or other education related to the needs of business. To be eligible for grant awards, technical college districts will develop proposals with a business to provide skills training or education to improve employee skill levels, and workplace efficiency and productivity. Grant proposals will also be assessed for the extent to which the proposed training or education supports regional workforce and economic development efforts.

6. Summary of, and comparison with, existing or proposed federal regulations: not applicable

7. Comparison with rules in adjacent states: not applicable

8. Summary of factual data and analytical methodologies: not applicable

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: not applicable

10. Effect on small business: Small businesses may access training or education through the training program grants, but there is no mandated participation in the program.

11. Agency contact person: Morna Foy, Executive Assistant, Wisconsin Technical College System, 345 W. Washington Ave, P.O. Box 7874, Madison, Wisconsin 53707–7874, telephone (608) 266–2449, e–mail morna.foy@wtcsytem.edu.

It is the policy of the Wisconsin Technical College System Board (WTCSB) to provide accommodations to persons with disabilities which may affect their ability to access or participate in WTCS activities. Persons may request assistance or reasonable accommodation for the scheduled public hearing by contacting Morna Foy at (608) 266–2449 or accessing the telecommunications device for the deaf at (608) 267–2483 on or before December 28, 2005.

12. Place where comments are to be submitted and deadline for submission: Written comments will be accepted by the agency contact person listed above until 4:00 p.m. on January 4, 2006. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

TEXT OF RULE

Section 1. Chapter TCS 17 (title) is created to read:

CHAPTER TCS 17 (title)

TRAINING PROGRAM GRANTS

TCS 17.01 PURPOSE. The purpose of this chapter is to establish procedures to implement and administer training grants to technical college districts to provide skills training or other education related to the needs of business s. 38.41, Stats.

TCS 17.02 DEFINITIONS. In this chapter:

(1) “Board” means the Technical College System Board established under ch. 15.94, Stats.

(2) “District” means a technical college district established under ch. 38, Stats.

(3) “District board” means the district board in charge of the technical colleges of a district.

(4) “Instructional Materials, Software, and Equipment” means instructional materials, software and equipment to be directly used or consumed by the business employees during instructional activities.

(5) “Staff Development” means learning activities that can be expressly designed to increase the expertise of a technical college district instructor who will deliver instruction described in the grant application.

(6) “Technical college” means a Wisconsin technical college established under ch. 38, Stats.

TCS 17.03 GENERAL. (1) Only technical college districts are eligible to apply for grants funds under this chapter.

(2) The Board shall approve grant guidelines and may update as needed. The guidelines shall contain application instructions, requirements and procedures, application deadline dates, allowable uses of funds, and award limits.

TCS 17.04 GRANT APPLICATIONS. (1) At times established by the board, a district may submit a proposal for a grant to provide skills training or other education related to the needs of business.

(2) Each grant proposal shall include all of the following:

(a) A description of the process used to identify both employee and company needs and the goals and expectations of the program.

(b) A description of the nature of the business receiving training as well as their products and or services, including a description of the impact of the business on the local or regional economy.

(c) A description of the allowable activities to be funded by the grant.

(d) A standard financial report and detailed budget.

TCS 17.05 GRANT AWARD CRITERIA. When considering approval or disapproval of a grant award, the board shall consider:

(1) Whether the grant proposal has sufficient financial resources to successfully provide the training or education as proposed in the grant proposal.

(2) The extent to which the proposed training or education will improve employee skill levels, workplace efficiency and productivity.

(3) The extent to which the proposed training or education will improve the availability of services to businesses and promote an increased investment in the development of incumbent workers.

(4) The extent to which the proposed training or services support regional workforce and economic development efforts.

TCS 17.06 CONDITIONS OF THE GRANT AWARD. (1) District boards or employers receiving skills training or education under the grant shall contribute matching funds, other than in–kind matching funds, equal to at least 25% of total approved project costs.

(2) Grant award funds, including matching funds, may not be used for administration, marketing, or indirect costs.

(3) The board may establish limitations on the percentage of the grant award funds and matching funds that may be used to purchase or lease instructional materials, software, equipment or supply items and that may be used to fund staff development costs. Such limitations shall be specified in the grant guidelines approved by the board under TCS 17.02 (2).

TCS 17.07 REPORTING REQUIREMENTS. (1) A district receiving a grant under this chapter shall submit to the

board data and information on the use and effect of grant funds as specified in the grant guidelines approved by the board under TCS 17.02 (2).

Proposed Effective Date

The proposed effective date for this rule is May 1, 2006.

Final Regulatory Flexibility Analysis

Not applicable.

Fiscal Estimate

These rules implement s. 38.41, Wis. Stats., which requires the technical college system board to establish administrative rules to implement and administer training program grants.

The functions required by these rules can be absorbed within existing staff. Therefore, there is no fiscal effect on the agency. A fiscal estimate based on the fiscal effect of the authorizing statute may be obtained from the Wisconsin Technical College System Board upon request.

Notice of Hearing Transportation [CR 05–109]

NOTICE IS HEREBY GIVEN that pursuant to s. 343.02 (1) Stats., and interpreting s. 343.05 (4) (b) 1., Stats., the Department of Transportation will hold a public hearing in **Room 254** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **11th** day of **January**, 2006, at **2:00 PM**, to consider the amendment of ch. Trans 102, Wisconsin Administrative Code, relating to the time period within which a person moving to Wisconsin may operate a motor vehicle under a driver license from his or her previous state of residence.

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

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

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 343.05 (4) (b) 1., Stats.

Statutory authority: s. 343.02 (1), Stats.

Explanation of agency authority: Section 343.02(1), Stats., grants the Department responsibility for administering and enforcing Chapter 343, Stats., and authority to promulgate such rules as the secretary considers necessary for that purpose.

Related statute or rule:

- Section 340.01 (37), the definition of "Nonresident" for the motor vehicle code.
- Section 343.01 (2) (g), the definition of "Resident" for driver licensing purposes.
- Section 343.06 (1) (k), which prohibits issuance of licenses to nonresidents.

Plain language analysis: Current law requires all persons to have driver licenses as a condition of operating a motor vehicle on a highway. Residents must hold a Wisconsin driver license. s. 343.05, Stats. Nonresidents must be at least 16 years old have a license from their home jurisdiction. Nothing in the statutes deals with the situation of a person moving to Wisconsin and establishing residence here. Statutorily, once a person establishes their one permanent home in this state, they cannot operate on the license from their old state of

residence. The statutes do not provide any leeway or time period within which a person may operate on their out-of-state license upon moving to this state.

Because this circumstance arises frequently, WisDOT promulgated an administrative rule that provides a 30-day deadline for new residents to obtain a driver license. In practice, police agencies statewide do not arrest persons for driving without a driver license within the first 30 days after they move to this state following the spirit of the regulation.

In the past year, WisDOT has implemented new, more stringent proof of identity requirements as a condition of obtaining a Wisconsin driver license. Rather than simply accepting the out-of-state license as evidence of identity, the Department also requires documentation such as a certified birth certificate or passport.

DMV has found that person moving to this state often cannot obtain these required documents within 30 days of moving to this state. Accordingly, this rule making proposes to extend the time period within which people should obtain a Wisconsin driver license after moving to this state to 60 days.

Summary of, and preliminary comparison with, existing or proposed federal regulation: There is no federal legislation on this point. Federal CDL law, in fact, permits states to issue CDLs to drivers who are not residents of their states.

Comparison with Rules in Adjacent States:

Michigan: Michigan law does not appear to allow a driver any grace period. Mich. Comp. Laws, ss. 257.301 and 257.302.

Minnesota: Allows new resident 60 days to obtain Class D or M Minnesota license, 30 days to obtain a Minnesota CDL. s. 171.03, Minn. Stats.

Illinois: Allows new resident 90 days to obtain an Illinois driver license. 625 ILCS 5/6.102(7).

Iowa: License must be obtained immediately upon establishing residency in Iowa. s. 321.174, Iowa Code.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Not applicable.

Analysis and supporting documentation used to determine effect on small businesses: None.

Effect on small business: This proposed rule would have no effect on small business. 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 or private sector revenues or liabilities.

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 Erin Egan, Department of Transportation, Division of Motor Vehicles, Office of Program Operations, Room 351, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Egan by phone at (608) 266-1449.

To view the proposed amendments to the rule, view the current rule, and submit written comments via

e–mail/internet, you may visit the following website:
<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Notice of Hearing Transportation

NOTICE IS HEREBY GIVEN that pursuant to s. 110.075 and ch. 194, Stats., interpreting ch. 194, Stats., the Department of Transportation will hold a public hearing on the **13th** day of **February**, 2006, at the Hill Farms State Transportation Building, **Room 551**, 4802 Sheboygan Avenue, Madison, WI, at **3:00 PM**, to consider the amendment of ch. Trans 325, Wisconsin Administrative Code, relating to motor carrier safety regulations.

Parking for persons with disabilities and an accessible entrance are available.

A copy of the emergency rule may be obtained upon request from Capt. Charles R. Teasdale, Wisconsin Department of Transportation, Division of State Patrol, Bureau of Field Operations, Room 551, P. O. Box 7912, Madison, WI 53707–7912, or by calling (608) 266–0305.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Ch. 194, Stats.

Statutory authority: s. 110.075 and Ch. 194, Stats.

Explanation of agency authority: The secretary shall set standards and adopt rules to establish a plan of inspection to implement the inspection program. It shall be the duty of the department to prescribe rules and regulations as to safety and operations and the hours of labor of drivers of motor vehicles operated under the authority of this chapter.

Related statute or rule: ss. 110.07, Stats.

Plain language analysis: As prescribed by state statute, the Department is mandated to regulate both intra and interstate transportation of property and passengers by commercial motor vehicles. It is in the best interest of the public when current regulations are used for enforcement of these regulations.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Trans 325 (Interstate Motor

Carrier Safety regulations) adopts Federal regulations 49CFR parts 390 to 397.

Comparison with Rules in Adjacent States: All adjacent states (Michigan, Minnesota, Illinois and Iowa) adopt the same Federal regulations.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: The Federal Motor Carrier Safety Administration did extensive research into the hours–of–service for commercial vehicle drivers. Its research, coupled with input from the motor carrier industry, resulted in the new hours–of–service regulations for interstate commerce effective October 1, 2005. It is imperative the same regulations are enforced from state–to–state.

Analysis and supporting documentation used to determine effect on small businesses: The research provided by the Federal Motor Carrier Safety Administration was used in analyzing the effects on small business.

Effect on small business: All businesses will have the same effect. There is no differentiation between small business and large business. 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 or private sector revenues or liabilities.

Copies of Emergency Rule: Requests for copies of the emergency rule should be submitted to Capt. Charles Teasdale, Department of Transportation, Division of State Patrol, Bureau of Field Services, Room 551, P. O. Box 7912, Madison, WI 53707–7912. You may also contact Capt. Teasdale by phone at (608) 266–0305.

To view the emergency rule, you may visit the following website:
<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Submittal of proposed rules to the legislature

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

Dentistry Examining Board

(CR 04–095)

Ch. DE 11, relating to the requirements for administering the office facilities and equipment for safe and effective administration and the applicable standards of care, and to provide for reporting of adverse occurrences related to anesthesia administration.

Insurance

(CR 05–099)

Ch. Ins 8, relating to small employer uniform employee application for group health insurance.

Transportation

(CR 05–082)

Ch. Trans 200, relating to specific information signs.

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.

Agriculture, Trade and Consumer Protection (CR 05-044)

An order affecting chs. ATCP 60, 69, 70, 71, 75, 77, 80, 82 and 85, relating to food and dairy license and reinspection fees.

Effective 1-1-06.

Financial Institutions – Banking Financial Institutions – Savings Banks Financial Institutions – Savings and Loan (CR 05-045)

An order affecting chs. DFI-Bkg 3, DFI-SB 16 and DFI-SL 22, relating to debt cancellation contracts and debt suspension agreements.

Effective 4-1-06.

Financial Institutions – Credit Unions (CR 05-046)

An order affecting ch. DFI-CU 74, relating to incidental powers activity authority parity with federal credit unions.

Effective 2-1-06.

Health and Family Services (CR 05-080)

An order affecting ch. HFS 149, relating to Selection and Monitoring of Vendors for the Special Supplemental Food Program for Women, Infants and Children (WIC).

Effective 2-1-06.

Public notices

Financial Institutions – Banking

Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts For 2006

Under Section 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association, or mortgage banker, which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance, shall pay interest on the outstanding principal of the escrow.

Section 138.052 (5) (am) 2., Stats., directs the division of banking to determine annually the required interest rate. The rate is based on the average of interest rates paid on regular passbook deposit accounts by institutions under the division of banking's or office of credit unions' jurisdiction.

The Department of Financial Institutions, Division of Banking, has calculated the interest rate required to be paid on escrow accounts under Section 138.052 (5), Stats., to be 0.83% for 2006. This interest rate shall remain in effect through December 31, 2006.

Contact Person:

Mr. Michael J. Mach, Administrator

Department of Financial Institutions

Division of Banking

Telephone (608) 261–7578

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Department of Administration
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