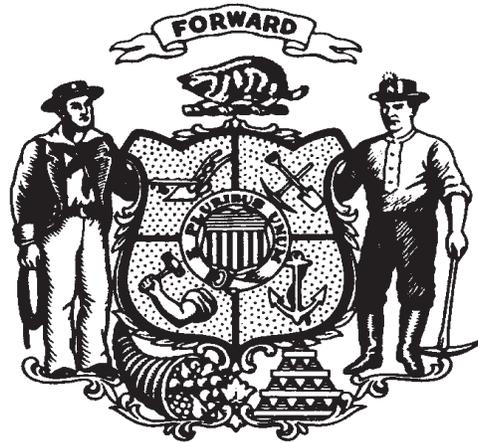


Wisconsin Administrative Register

No. 605



Publication Date: May 31, 2006

Effective Date: June 1, 2006



Revisor of Statutes Bureau
Suite 800, 131 West Wilson Street
Madison, Wisconsin 53703-3233

The 2003 – 04 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*[®] CD-ROM

Bound Volumes:

Prices for the 2003 – 04 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

Hard Cover	Hard Cover	Soft Cover	Soft Cover
<u>With Postage</u>	<u>Without Postage</u>	<u>With Postage</u>	<u>Without Postage</u>
\$152.00	\$146.00	\$130.00	\$124.00

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419.

WisLaw[®] CD-ROM:

Up-to-date *WisLaw*[®] CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*[®] contains:

- Wisconsin Statutes and Annotations with Index
- Table of Cross-References and Table of Sections Affected by Acts
- Wisconsin Administrative Code with Index, Administrative Register, and Emergency Rules
- Executive Orders
- Wisconsin Acts with Index
- Supreme Court Rules and Internal Operating Procedures
- Recent Opinions of the Attorney General with Index
- Wisconsin Constitution with Annotations and Index
- U.S. Constitution
- Wisconsin Town Law Forms
- Wisconsin Code of Military Justice

All of the above *WisLaw*[®] Infobases are substantially integrated with hypertext links. The statutes now feature thousands of links between administrative rules and their authorizing statutes. State agencies are using *WisLaw*[®] for their legal research. *WisLaw*[®] is distributed by the Document Sales and Distribution Section to state agencies that submit a complimentary annual subscription form.

WisLaw[®] is available only by annual subscription. *WisLaw*[®] End-user license and subscription order forms are available at Document Sales or at <http://www.legis.state.wi.us/rsb>. CDs will be delivered only upon receipt of a signed license and subscription form and full payment. An annual subscription plus a license for no more than one simultaneous user costs \$99. Licenses for no more than 4 simultaneous users or for no more than 10 simultaneous users cost \$149 or \$199, respectively. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

Orders by FAX will **not** be accepted; call (608) 266–3358 or TTY (608) 264–8499 or write to:

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, WI 53707–7840

Table of contents

Emergency rules now in effect.**Pages 4 to 8**

Agriculture, Trade and Consumer Protection:

Rules relating to a poultry flock certification program.

Commerce:

Commercial Buildings, Chs. Comm 61 to 65

Rules relating to automatic fire suppression for student housing facilities serving colleges and universities.

Elections Board:

Rules relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Rules relating to commercial fishing for lake trout in Lake Superior.

Rules relating to the issuance of turkey hunting permits.

Rules relating to the forestry research and development grant program.

Rules relating to regulation of firewood entering and exiting department lands and affecting small businesses.

Environmental Protection—Water Regulation, Chs. NR 300—

Rules relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

Rules relating to shore erosion control on rivers and streams.

Regulation and Licensing:

Rules relating to a code of conduct and renewal requirements for substance abuse professionals.

Revenue:

Rules relating to the computation of the apportionment fraction by multistated public utilities and telecommunications companies.

Rules relating to electronic funds transfer, information returns and wage statements.

Workforce Development:

Labor Standards, Chs. DWD 270–279

Rules relating to overtime pay for employees performing companionship services.

Scope statements.**Pages 9 to 12**

Natural Resources:

Rules affecting chs. NR 660 to 679, to incorporate new, national uniform Federal hazardous waste manifest regulations.

Rules affecting ch. NR 105, to bring Wisconsin into conformance with federal fish and aquatic life water quality criteria for copper, endrin, nickel, and selenium.

Regulation and Licensing: Rules affecting setting standards and procedures relating to continuing education program content and hours for dental hygienists.

Rules affecting rules relating to the licensure of midwives.

Transportation: Rules affecting s. Trans 102.15 (proof of identification) to include documentary proof of U.S. citizenship or legal presence.

Rules affecting ch. Trans 112, relating to the issuance of motor vehicle operator licenses to persons that have a medical condition that may affect their ability to exercise reasonable control over a motor vehicle.

Submittal of rules to legislative council clearinghouse. Pages 13 to 14

Chiropractic Examining Board: Rules relating to nutritional counseling certification.

Natural Resources: Rules affecting chs. NR 406, 407 and 410, relating to air pollution permit exemptions and air pollution permit exemption fees.

Pharmacy Examining Board: Rules relating to controlled substances theft and loss reporting requirements.

Rules relating to a foreign graduate internship.

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

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

Rule-making notices. Pages 15 to 24

Chiropractic Examining Board: Hearing to consider rules affecting chs. Chir 4, 5, 6 and 12, relating to nutritional counseling certification.

Natural Resources Environmental Protection – Water Regulation
Hearing to consider emergency rules affecting ch. NR 328, pertaining to shore erosion control on rivers and streams.

Environmental Protection – Air Pollution Control
Hearings to consider rules affecting chs. NR 406, 407 and 410, relating to air pollution permit exemptions and air pollution permit exemption fees.

Pharmacy Examining Board: Hearing to consider rules affecting ch. Phar 8, relating to controlled substances theft and loss reporting requirements.

Hearing to consider rules affecting chs. Phar 2 and 17, relating to a foreign graduate internship.

Transportation:	Hearing to consider rules affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.
	Hearing to consider rules affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.
Submittal of proposed rules to the legislature.	Page 25
Natural Resources:	Rules affecting chs. NR 102 and 207, relating to water quality classifications in the Lake Superior basin and the related antidegradation procedures for WPDES permits.
	Rules affecting ch. NR 10, relating to deer hunting as it relates to the control and eradication of chronic wasting disease.
Veterans Affairs:	Rules affecting ch. VA 16, relating to the county transportation services grant program.
Rule orders filed with the revisor of statutes bureau.	Page 26
Employment Relations Commission:	CR 02–037 – An order affecting chs. ERC 1 to 26, 28, 30 to 33, 40 and 50, relating to the administration of collective bargaining laws.
Insurance:	CR 06–002 – An order affecting ch. Ins 17, relating to fund fees fiscal year 2007.
Natural Resources:	CR 05–084 – An order affecting ch. NR 118, relating to management zone designations in the Lower St. Croix National Scenic Riverway.
	CR 05–086 – An order affecting ch. NR 10, relating to deer hunting season and permit issuance regulation changes.
	CR 05–100 – An order affecting ch. NR 192, relating to lake monitoring contracts and the citizen lake monitoring network.
	CR 05–102 – An order affecting ch. NR 10, relating to small game and expanded spring turkey hunting in state parks.
Rules published with this register and final regulatory flexibility analyses.	Page 27 to 28
Sections affected by rule revisions and corrections.	Page 29
Sections affected by revisor’s corrections not published.	Pages 30 to 31
Executive orders.	Page 32

Emergency rules now in effect

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection

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

Finding of Emergency

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

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

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

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

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

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

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

Commerce

(Commercial Buildings, Chs. Comm 61–65)

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

Finding of Emergency

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

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

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

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

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

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

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

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

Elections Board

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

Finding of Emergency

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

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

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

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

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

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

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

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

Finding of Emergency

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

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

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

Plain Language Analysis

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

Exemption from finding of emergency

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

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

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

Finding of Emergency

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

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

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

Finding of Emergency

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

Publication Date: March 27, 2006
Effective Date: April 1, 2006
Expiration Date: August 29, 2006

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

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

Finding of emergency

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

responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

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

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

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

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

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

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

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

- Rules adopted creating ss. NR 328.31 to 328.36, relating to shore erosion control on rivers and streams.

Finding of Emergency

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

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30-day public notice.

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

Publication Date: May 5, 2006
Effective Date: May 8, 2006
Expiration Date: October 4, 2006
Hearing Date: June 13, 2006
 [See Notice This Register]

Regulation and Licensing

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

Plain language analysis

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

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

Exemption from finding of emergency

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

Publication Date: April 15, 2006
Effective Date: April 15, 2006
Expiration Date: September 12, 2006

Revenue (2)

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

Finding of emergency

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

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

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

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

Publication Date: December 5, 2005
Effective Date: December 5, 2005
Expiration Date: May 4, 2006
Hearing Date: February 27, 2006
Extension Through: July 2, 2006

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

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

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

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

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

Publication Date: December 28, 2005
Effective Date: December 28, 2005
Expiration Date: May 27, 2006
Hearing Date: March 15, 2006
Extension Through: July 25, 2006

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

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

Finding of emergency

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

On January 21, 2004, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for

nonmedical home care companion employees of an agency as part of ch. DWD 274.

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

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

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

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD

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

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

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

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

Scope statements

Natural Resources

Subject

Objective of the rule. Revise the Hazardous Waste rule series (chs. NR 660 to 679, Wis. Adm. Code) to incorporate new, national uniform Federal hazardous waste manifest regulations.

Policy analysis

A special manifest document must be used to lawfully transport hazardous wastes from generators to treatment, storage or disposal facilities. The manifest system is an important component of the “cradle to grave” regulation of hazardous wastes in the United States under the Resource Conservation and Recovery Act (RCRA) and similar state laws, such as ch. 291, Wis. Stats. Hazardous waste manifest forms are intended to ensure that hazardous waste is tracked and managed safely from the moment it leaves the generation site to the moment it arrives at a treatment, storage or disposal facility.

The U.S. Environmental Protection Agency (EPA) recently promulgated significant revisions to the manifest regulations that take effect September 5, 2006. The new EPA regulations require the use of standard manifest forms in all states, and require certification from EPA to be allowed to print the manifest forms. While the new federal requirements will apply in all states, including Wisconsin they will not override or supersede Wisconsin’s state-specific hazardous waste manifest requirements. To prevent potential conflicts and confusion with our current manifest rules, Wisconsin’s rules must be revised or the advantages of a single, uniform nationwide system will be lost. As the permanent rule process is underway, the Department proposes to adopt the new federal uniform manifest requirements as an emergency rule, in order to be in effect by September 5, 2006, when the new federal forms are required to be used in Wisconsin.

Statutory authority

Sections 291.05 (5) (a) 3. and (6) (a) and (b), and 227.11 (2) (a), Stats.

Staff time required

Approximately 120 hours of staff time will be needed for these revisions.

Comparison with federal regulations

Although the use of manifests is federally mandated, states until now have had the option to provide or require the use of state-specific manifest forms, which Wisconsin has done. Wisconsin’s manifest form differs from the new federal uniform manifest form, and our manifest requirements relating to recordkeeping and handling of the manifest also differ. The proposed rule will revise the state requirements to conform to the new federal requirements: standardizing the content and appearance of the manifest form and continuation sheet; making the forms available from a greater number of sources; and adopting new procedures for tracking certain types of waste shipments.

Natural Resources

Subject

Objective of the rule.

1. To be consistent with the federal Great Lakes Water Quality Initiative, an update to ch. NR 105 (Wis. Adm. Code) is needed to bring Wisconsin into conformance with federal fish and aquatic life water quality criteria for copper, endrin, nickel, and selenium.

The United States Environmental Protection Agency took formal action in December 2000 to object to the State of Wisconsin’s water quality criteria for four substances regulated under the Great Lakes Water Quality Initiative (GLI) – an federal law passed in 1995. In response to the federal GLI, Wisconsin promulgated changes to ch. NR 105 (Wis. Adm. Code) that were believed to be consistent with the requirements of the federal law. U.S. EPA’s objections were based on differences between the published water quality criteria for copper, endrin, nickel, and selenium for the protection of fish and aquatic life. Several reasons exist for the differences:

a. Wisconsin’s published water quality criteria for copper and nickel are different than the federal criteria because a calculation error was made in the derivation of the criteria for fish and aquatic life protection. These errors are corrected as part of the proposed code revisions.

b. Wisconsin’s criteria for criteria for copper are different because certain species of organisms that affected the federal criteria are not present in the Great Lakes Basin or in waters of the Upper Mississippi River basin and were not used in the derivation of state criteria. No additional changes based on the regional test data are proposed at this time.

c. Wisconsin did not adopt water quality criteria for selenium when it last updated ch. NR 105 (Wis. Adm. Code) in 1997.

d. Wisconsin considered more recent toxicological data on copper and nickel that had not yet been published in the scientific literature when the federal criteria were originally promulgated in 1995.

This rulemaking effort will address the concerns expressed by U.S. EPA and will provide Wisconsin with water quality criteria for these four substances based on contemporary science. The resultant changes will include revisions to the existing acute and chronic water quality criteria for copper and nickel, a revision to the chronic criterion for endrin, and the establishment of a new chronic criterion for selenium.

2. To be consistent with the human health water quality criteria published by U.S. EPA in accordance with Section 304(a) of the Clean Water Act, an update to Chapter NR 105 (Wis. Adm. Code) is needed to bring Wisconsin into conformance with federal water quality criteria for 1,2-dichlorobenzene, 1,3-dichloropropene, 3,3-dichlorobenzidine, antimony, arsenic, cadmium, chlorobenzene, chromium⁺³, chromium⁺⁶, cyanide, ethylbenzene, hexachlorocyclopentadiene, and toluene.

Under the authority of section 304(a) of the Clean Water Act, U.S. EPA periodically revises and/or publishes new

federal water quality criteria for substances that may adversely affect the health of humans, wildlife, fish and other aquatic life. These updates are generally in response to the availability of new toxicological data that provides contemporary information on the risks associated with exposure to the chemical pollutants. U.S. EPA has reviewed all of the criteria that have been updated since Wisconsin last revised Chapter NR 105 (Wis. Adm. Code). U.S. EPA identified differences between Wisconsin's published water quality criteria for those substances listed above and has indicated a need for Wisconsin to update its water quality standards to be as protective as U.S. EPA.

Policy analysis

1. Copper, Endrin, Nickel: there are no policy changes associated with the revisions to the copper, nickel, and endrin criteria because the procedure for calculating the acute and chronic criteria is unchanged from the existing rule. Only the numerical results are different because of the additional data, the regional-specific data adjustment, and the correction of the calculation errors. Based on effluent data for Wisconsin dischargers, revisions to the criteria for copper, nickel, and endrin are not likely to cause significant impacts to the regulated community.

As for copper, the tentative changes to the water quality criteria will result in slightly more stringent effluent limitations for about 125 permitted facilities in the Great Lakes Basin that currently have effluent limitations. It is possible that a small number of additional permitted facilities will also see effluent limitations for the first time. It is the belief of staff that these changes will not result in a significant impact to the overall compliance status of many of the affected WPDES permittees.

Effluent limitations for nickel resulting from the tentative changes will most likely be more stringent than found in current permits. However, because effluent concentrations are historically very low for nickel, the changed limitations are not expected to result in an increase in noncompliance for the affected WPDES permittees.

Similarly, endrin has rarely been detected in wastewater effluents and effluent limitations have not been necessary. In fact, endrin has only been detected in the effluents of 2 of 395 municipal dischargers and has not been detected in any of the 209 industrial dischargers. As such, it is unlikely that any compliance issues will be observed as a result of the tentative changes in water quality criteria.

2. Selenium: there are also no new policy changes associated with the tentative selenium criterion change, although Wisconsin does not currently have a chronic fish and aquatic life criteria published in Chapter NR 105 (Wis. Adm. Code). Wisconsin does have a human health water quality criterion, but chose not to adopt a chronic selenium criterion in its 1997 rule revision due to concerns about U.S. EPA's use of toxicological translators. As a result, U.S. EPA over-promulgated Wisconsin and has indicated that the federal criterion must be used to establish effluent limitations where applicable to Great Lakes Basin discharges.

Based on the effluent concentration data submitted with WPDES permit applications, a new chronic criterion for selenium is not likely to cause significant impacts to the regulated community. In a recent review of effluent data, selenium has only been detected in 11 of 395 municipal discharges and 12 of 219 industrial discharges. None of those facilities has an effluent limitation based on human health protection. It is also unlikely that any of those facilities will require a limitation for the protection of fish and aquatic life.

3. Human Health Water Quality Criteria Changes: 1,2-dichlorobenzene, 1,3-dichloropropane, 3,3'-dichlorobenzidine, antimony, chlorobenzene and hexachlorocyclopentadiene are detected very rarely in industrial and municipal effluents. Chromium ⁺³ and Chromium⁺⁶, ethylbenzene and toluene are detected more frequently, but the typical concentrations found in effluents are well below the proposed criteria such that permit limits are not expected to be necessary. Cadmium and cyanide are detected relatively often. However, the proposed human health criteria are less stringent than current toxicity criteria included in ch. NR 105 for the protection of fish and aquatic life. As such, inclusion of effluent limitations in a WPDES permit would be driven by the more stringent fish and aquatic life criteria instead of on human health.

Similarly, change in the human health criteria for arsenic is not likely to result in more effluent limitations. This is due to the fact that the proposed federal arsenic criteria are less stringent than those already included in ch. NR 105. At this time, the only areas of the state in which human health-based arsenic limits are needed in permits are in detected discharges directly to the waters of Lakes Michigan and Superior.

Statutory authority

Sections 227.11 (2), 281.15, and 283.001, Stats.

Statutes interpreted: ss. 281.15, Stats.

Staff time required

No changes are proposed in the procedures for calculating water quality criteria or in how the criteria are used to calculate effluent limitations for WPDES permits. Only the numerical criteria for noted substances are being revised for the reasons indicated above. As a result, staff does not believe that significant time or explanation will be needed to explain the proposed language changes.

Staff also do not believe that any significant unresolved issues exist with this package since there are no actual narrative language changes and a significant amount of information sharing has already taken place with U.S. EPA regarding the new criteria. Approximately 100 hours of staff time will be needed to process this rule.

Comparison with federal regulations

U.S. EPA promulgated regulations for copper, endrin, nickel, and selenium in the states bordering the Great Lakes in 1995 (60 FR 15366, March 23, 1995) as part of the Final Water Quality Guidance for the Great Lakes system. The Department promulgated rules in 1997 to incorporate these federal requirements. The proposed rulemaking effort is needed to so that the criteria for copper, nickel, selenium, and endrin are as protective as the Federal guidance. Although the Great Lakes regulations are designed to provide consistency within the Great Lakes basin, Wisconsin's rules would apply these criteria statewide in order to establish regulatory consistency between the waters in the Great Lakes basin and the waters in the Upper Mississippi River basin.

Further, U.S. EPA has published a number of updates to federal water quality criteria in accordance with the requirements of Section 304(a) of the Clean Water Act. Updates to human health criteria published through November 2003 are included in this request. U.S. EPA has indicated that Wisconsin must in turn update state water quality criteria to be as protective as the federal criteria or face the risk of federal over-promulgation.

Entities affected by the rule

Municipal and industrial permittees with surface water discharges that have detected any of the substances described

above may be affected by these rules. It is possible that detections may warrant more frequent effluent monitoring or even possible limitations to show compliance with the necessary limitations. Effluent monitoring has historically indicated that most permitted dischargers do not detect most of the substances addressed in this memo. As such, there are no indications that the tentative criteria changes will result in a significant change in the number of permit limitations required.

With respect to copper, however, it is commonly detected in wastewater effluent. In fact, about one of nine municipal dischargers has an acute copper limitation in their WPDES permits while one of twelve includes a chronic limitation. For industries, one in six permittees has an acute limitation and one in eleven has a chronic limitation. Since the proposed criteria are lower than those in the current rule, it is possible these ratios could increase as well. With the small number of facilities that have limits, however, and the fact that the criteria are only changing by about 10%, it is unlikely that there will be a significant increase in the number of limitations needed. For those permittees that already have a copper limitation, it may be necessary to reissue future permits with a slightly more stringent effluent limitation than is included in a current permit. It is not anticipated that these differences will require significant changes in operation of treatment facilities or source controls.

Regulation and Licensing

Subject

Setting standards and procedures relating to continuing education program content and hours for dental hygienists.

Policy analysis

Objective of the rule. In April 2006, the Legislature passed and the Governor enacted 2005 Wisconsin Act 318, which established a continuing education requirement for dental hygienists as a precondition to license renewal. Act 318 requires the Department of Regulation and Licensing to establish rules regarding the biennial requirements for required clinical coursework and number of hours.

Act 318 brings dental hygienists into a large group of professionals in Wisconsin that have a continuing education requirement as a component of license renewal, in addition to 47 other states that have a continuing education requirement for dental hygienists. Continuing education requirements are seen as helpful in fields that have a significant opportunity to affect the public's health, welfare and safety. The legislation allows the department, after consultation with the Dentistry Examining Board and the Department of Health and Family Services, to adjust the number of hours and to require coursework in specific clinical subjects.

Entities affected by the rule

Dental hygienists and the Wisconsin Department of Regulation and Licensing.

Comparison with federal regulations

There is no existing or proposed federal regulation.

Statutory authority

Section 227.11 (2), Stats., and 447.055, Stats., as created by 2005 Wisconsin Act 318, and chapter 440, Stats.

Staff time required

124 hours.

Regulation and Licensing

Subject

Establishment of administrative rules of the Department of Regulation and Licensing regarding the licensure of midwives. The new rules will establish policies for granting of licensure, scope of practice, and professional conduct.

Policy analysis

Objective of the rule. To implement the statutory provisions of 2005 Wisconsin Act 292.

The creation and establishment of a new section of administrative rules of the Department of Regulation and Licensing relating to licensure of midwives is necessary to implement newly created Subchapter XI of chapter 440 of the Wisconsin Statutes pursuant to 2005 Wisconsin Act 292.

Comparison with federal regulations

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

Entities affected by the rule

Midwives that are electing to be licensed in this category. Department of Regulation and Licensing; Credentialing, Division of Enforcement, Board Services/Office of Education and Examinations, and Office of Legal Counsel.

Statutory authority

Section 227.11 (2), Stats., and subchapter XI of chapter 440, Stats., as created by 2005 Wisconsin Act 292.

Staff time required

400 hours.

Transportation

Subject

Objective of the rule. 2005 Wisconsin Act 126 requires individuals applying for a driver's license or identification card to provide documentary proof of U.S. citizenship or legal presence in this country. This rule making will amend s. Trans 102.15 (proof of identification) to include documentary proof of U.S. citizenship or legal presence, as required by 2005 Wisconsin Act 126.

Policy analysis

Current law requires applicants to provide proof of name and date of birth, identity and residency. This will require applicants to also provide proof of U.S. citizenship or legal presence. This rule making is required to comply with 2005 Wisconsin Act 126, which takes effect April 1, 2007.

Comparison with federal regulations

Proposed changes will move Wisconsin towards compliance with the federal REAL ID Act, which takes effect May 11, 2008.

Entities affected by the rule

Immigration advocacy groups

Law enforcement

Statutory authority

Section 343.14 (2) (er), as created by 2005 Wisconsin Act 126.

Staff time required

40 hours.

Transportation

Subject

This rulemaking will amend ch. Trans 112, relating to the issuance of motor vehicle operator licenses to persons that

have a medical condition that may affect their ability to exercise reasonable control over a motor vehicle. Currently, physicians are the only approved medical professionals allowed to submit to DMV medical information concerning drivers, or report drivers who may be medically unfit to drive. This rule making will allow Advanced Practice Nurse Prescribers (APNP) to complete and submit medical reports to the Department. In addition, the proposed changes will clarify the requirements of full or partial limb amputees to undergo a reevaluation by the Department to insure the amputation has not affected their ability to exercise reasonable control over a motor vehicle.

Section 343.12 (7), Stats., lists crimes the conviction for which disqualifies a person from possessing a license to drive a school bus. That statute both describes the offense and lists a statutory reference to that offense. That statute also disqualifies school bus drivers who are convicted under the laws of another state for crimes that would be a listed crime if committed in this state. In effect, the substance of the out-of-state conviction and its comparability to a disqualifying Wisconsin statute determines whether the out-of-state conviction is a disqualifying offense. Section 343.12 (8), Stats., requires the Department to promulgate rules listing additional disqualifying crimes and to establish the disqualification periods for those crimes. Several school bus drivers licensed by this state have been convicted of the offenses described in s. 343.12 (7), Stats., or described in ch. Trans 112, Wis. Admin. Code, albeit under different statutory references. For example, drug convictions under chapter 961, Stats., are disqualifying offenses, but convictions of those described crimes prior to July 1996 appear as convictions under ch. 161, Stats. (ch. 161, Stats., was renumbered to ch. 961, Stats., by 1995 Wisconsin Act 448). The Department believes that s. 343.12 (7), Stats., intends to disqualify drivers convicted of those substantive crimes, even if the numeric statutory reference of the conviction is different from that listed. Because ch. Trans 112 also contains numeric statutory references, the Department is amending the rule to clarify that the indicated period of disqualification applies to any individual convicted of the substantive crimes listed, even if the numeric statutory reference is different.

Policy analysis

APNP are currently authorized to verify a driver's

eligibility for disabled license plate products and to submit an interim school bus medical report required by ch. Trans 112. Amputation—this policy is a long-term past practice based under s. 343.16, Stats., but must be clarified to ensure continued fair and equitable use.

The alternative to specifying that the substance of a crime controls whether the driver is disqualified is to give controlling effect to the numeric statutory references. For example, persons who are convicted of a drug crime under ch. 161, Stats., before July 1996 would not be disqualified from driving a school bus, while persons convicted of the substantively identical crime after July 1996 are disqualified because that conviction occurred under ch. 961, Stats. This alternative would also allow future convictions to avoid being disqualifying offenses if the numeric references are changed. For example, if ch. 961, Stats., is one day renumbered to ch. 962, persons convicted under new ch. 962, Stats., would not be disqualified even though the substantive crime is unchanged.

Comparison with federal regulations

Federal regulations at 23 CFR 391.41(b)(1) and 391.41(b)(2) requires special testing of commercial drivers who lose a hand, arm or limb or have limb impairment. Federal regulations at 23 CFR 390.5 include advanced practice nurses (along with doctors of medicine, doctors of osteopathy, physician assistants and doctors of chiropractic) in the definition of "medical examiner."

Entities affected by the rule

Wisconsin and border state medical professionals, Wisconsin HMO and Hospital Organizations, drivers with medical and/or functional impairments, school bus companies, school bus drivers and the school districts that employ or contract for them, persons convicted of felonies under statutes since renumbered, persons missing hands, feet or limbs, or having impairment of limbs.

Statutory authority

Ch. 343, Stats.

Staff time required

40 hours.

Submittal of rules to legislative council clearinghouse

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

Chiropractic Examining Board

On May 15, 2006, the Chiropractic Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) 446.02 (2) (b), Stats.

The proposed rule-making order relates to nutritional counseling certification.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 22, 2006 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

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

Pamela.haack@drl.state.wi.us

Natural Resources

On May 9, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Rules affecting chs. NR 406, 407 and 410, relating to air pollution permit exemptions and air pollution permit exemption fees.

Agency Procedure for Promulgation

The Department of Natural Resources will hold public hearings on the proposed rules on June 27, 28 and 29, 2006.

Contact Person

Jeff Hanson
Bureau of Air Management
(608) 266-6876

Pharmacy Examining Board

On May 15, 2006, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (d), Stats.

The proposed rule-making order relates to controlled substances theft and loss reporting requirements.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 22, 2006 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

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

Pamela.haack@drl.state.wi.us

Pharmacy Examining Board

On May 15, 2006, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 450.04 (3) (b), Stats.

The proposed rule-making order relates to a foreign graduate internship.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 22, 2006 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

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

Pamela.haack@drl.state.wi.us

Transportation

On May 15, 2006, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

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

Agency Procedure for Promulgation

A public hearing is required and scheduled for June 16, 2006.

The Division of Transportation System Development, Bureau of Highway Operations is the the organizational unit responsible for promulgation of the proposed rule.

Contact Person

Julie A. Johnson, Paralegal
608 266-8810

Transportation

On May 15, 2006, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

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

Agency Procedure for Promulgation

A public hearing is required and scheduled for June 20, 2006.

The Division of Transportation System Development, Bureau of Highway Operations is the the organizational unit responsible for promulgation of the proposed rule.

Contact Person

Julie A. Johnson, Paralegal

608 266-8810

Rule-making notices

Notice of Hearing Chiropractic Examining Board [CR 06-051]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Chiropractic Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 446.02 (2) (b), Stats., and interpreting s. 446.02 (2) (b) and (c) and (6m), Stats., as created by 2005 Wisconsin Act 25, the Chiropractic Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. Chir 4.05 (1) (d); and to create ss. Chir 5.01 (1) (f) and (g), 6.02 (31) and chapter Chir 12, relating to nutritional counseling certification.

Hearing Date, Time and Location

Date: June 22, 2006
Time: 8:15 a.m.
Location: 1400 East Washington Avenue
 Room 121C
 Madison, Wisconsin

APPEARANCES AT THE HEARING:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before July 3, 2006 to be included in the record of rule-making proceedings.

Analysis

Statutes interpreted: Section 446.02 (2) (b), Stats., and s. 446.02 (2) (c) and (6m), Stats., as created by 2005 Wisconsin Act 25.

Statutory authority: Sections 15.08 (5), 227.11 (2) and 446.02 (2) (b), Stats.

Explanation of agency authority: 2005 Wisconsin Act 25 contained changes to s. 446.02 (2) (c) and (6m), Stats, which create an area of expanded practice for chiropractors. The legislature has directed that the Chiropractic Examining Board establish the educational requirements for this area of practice. Pursuant to s. 446.02 (2) (b), Stats., the Chiropractic Examining Board has the ability to set educational standards for licensure. This rule establishes the educational requirements for the new certificate as well as incorporating changes to prohibited practices, professional conduct and continuing education to make the rules consistent with the addition of nutritional counseling as a practice area.

Related statute or rule: Chapters Chir 4, 5 and 6; Chapter 446, Wis. Stats.

Plain language analysis: The Chiropractic Examining Board is proposing changes to s. Chir 4.05, prohibited practice, s. Chir 5.01, continuing education requirements for license renewal, and the creation of ch. Chir 12, relating to the certification process for nutritional counseling. These changes are in response to 2005 Wisconsin Act 25, that went

into effect on January 1, 2006, specifying that chiropractors will be able to expand their scope of practice to provide nutritional counseling once they have completed 48 hours of board-approved postgraduate study in nutrition and paying a one-time certification fee of \$25.

This proposed rule-making is required to define the substance and requirements of what constitutes a board-approved 48 hour post graduate program in nutrition. Rule-making is also required to develop additional continuing education requirements, possible exemptions for advanced nutritional education, and scope of nutritional counseling.

SECTION 1 amends the existing exception under s. Chir 4.05 Prohibited Practice which allows a chiropractor to sell vitamins, herbs or nutritional supplements to include the provisions under ch. Chir 12 Nutritional Counseling Certification.

Prior to the changes directed by 2005 Wisconsin Act 25, it was considered a prohibited practice for a chiropractor to engage in some types of nutritional counseling. This section makes changes to the prohibited practice language to allow counseling in compliance with the provisions of Act 25.

SECTION 2 defines the educational hour of coursework required under ch. Chir 12 and establishes that chiropractors who hold a nutritional counseling certificate shall complete at least 4 hours of study in nutrition as a part of their biennial 40 hours of continuing education requirement.

SECTION 3 expands the language of the unprofessional conduct provisions to recognize that a chiropractor who makes unsubstantiated claims about the effectiveness of nutritional counseling can be disciplined.

SECTION 4 sets out the minimum standards for the nutritional counseling coursework that is required to obtain the additional certificate. This section also sets out the procedure for course sponsors to obtain board approval. This section identifies the subject matter which must be covered and sets the standards for determination of successful completion. This section requires that the course contain at least 4 tests and that a score of 75% or higher is necessary to successfully complete the course.

This section also contains a sunset provision requiring that chiropractors must either obtain this education and certification or cease selling nutritional supplements within 24 months of the effective date of this rule.

Summary of, and comparison with, existing or proposed federal regulation: None.

Comparison with rules in adjacent states: Illinois:

A "chiropractic physician" licensed under Illinois's Medical Practice Act: 225 ILCS 60 may treat human ailments without the use of drugs or surgery [225 ILCS 60/2 (10)]. The statutes and rules appear to be silent regarding the provision of nutritional advice or counseling as well as the dispensation or prescription of nutritional supplements.

Michigan:

Pursuant to Michigan's Public Health Code Action 368 Section 333.16401 (1) (b) (iii), providing "nutritional advice" is within the chiropractic scope of practice; however, the prescribing or dispensing of drugs or medicine is not within their scope of practice.

Section 333.16401 (1) (b) (iii):

The use of analytical instruments, *nutritional advice*, rehabilitative exercise and adjustment apparatus regulated by rules promulgated by the board pursuant to section 16423, and the use of x-ray machines in the examination of patients for the purpose of locating spinal subluxations or misaligned vertebrae of the human spine. The practice of chiropractic does not include the performance of incisive surgical procedures, the performance of an invasive procedure requiring instrumentation, or the *dispensing or prescribing of drugs or medicine*.

Michigan's administrative rules are silent regarding provision of nutritional advice or counseling as well as the dispensation or prescription of nutritional supplements.

Minnesota:

Minnesota's statutes are mostly silent with regards to the provision, recommendation or dispensation of nutritional supplements. Minnesota statutes do mention that nutrition is a part of the required written chiropractic examination.

A chiropractor in Minnesota may provide nutritional therapy and counseling on a dietary regimen as part of Rehabilitative Therapy for their patients.

Minnesota Administrative Rules state:

2500.0100 Subp.11 Rehabilitative Therapy. "Rehabilitative therapy" means therapy that restores an ill or injured patient to the maximum functional improvement by employing within the practice of chiropractic those methods, procedures, modalities, devices, and measures which include mobilization; thermotherapy; cyrotherapy; hydrotherapy; exercise therapies; *nutritional therapy*; meridian therapy; vibratory therapy; traction; stretching; bracing and supports; trigger point therapy; massage and the use of forces associated with low voltage myostimulation, high voltage myostimulation, ultraviolet light, diathermy, and ultrasound; and *counseling on dietary regimen*, sanitary measures, occupational health, lifestyle factors, posture, rest, work, and recreational activities that may enhance or complement the chiropractic adjustment.

2500.4000 Rehabilitative Treatment.

Rehabilitative therapy, within the context of the practice of chiropractic, may be done to prepare a patient for chiropractic adjustment or to complement the chiropractic adjustment, provided the treating chiropractor initiates the development and authorization of the rehabilitative therapy. The administration of the rehabilitative therapy is the responsibility of the treating chiropractor. The rehabilitative therapy must be rendered under the direct supervision of qualified staff.

Iowa:

Iowa Statutes allow chiropractors to provide *nutritional advice* under Iowa Stats section 151.1 (3) Chiropractic Defined which states:

Persons utilizing differential diagnosis and procedures related thereto, withdrawing or ordering withdrawal of the patient's blood for diagnostic purposes, performing or utilizing routine laboratory tests, performing physical examinations, *rendering nutritional advice*, utilizing chiropractic physiotherapy procedures, all of which are subject to and authorized by section 151.8.

Iowa Statutes also provide that licensed chiropractors may not administer or prescribe drugs or medicine. Iowa Stats Section 151.5 Operative surgery – drugs.

A license to practice chiropractic shall not authorize the licensee to practice operative surgery, osteopathy, nor administer or prescribe any drug or medicine included in materia medica.

Iowa's administrative rules are silent regarding provision of nutritional advice or counseling as well as the dispensation or prescription of nutritional supplements.

Summary of factual data and analytical methodologies:

The Chiropractic Examining Board, in an effort to create an adequate curriculum of 48 hours of board-approved postgraduate study in nutrition, which was called for in the enactment of the statutes under 2005 Wisconsin Act 25, consulted with the following educational bodies and professional associations: Palmer College of Chiropractic; Northwestern Chiropractic College; Wisconsin Chiropractic Association; Wisconsin Dieticians Association.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The proposed rules for the provisions of nutritional counseling will affect the practice of small business as defined by a company, clinic or chiropractic practice is defined a business with 25 employees or less or less than \$5 million in annual receipt (billings).

Chiropractic Small Business Market Analysis: as per the Department of Commerce, the 2002 Economic Census Report for Health professions that are Employers who are chiropractors is:

1. 898 offices of Chiropractic with receipts (\$1000s) 255,518 for average receipts of \$284,541 per office with 3,477 paid employees (ave. of 4 per office).

as per the Department of Commerce, the 2003 Economic Census Status report for NonEmployers, which are establishments consisting of one licensed Chiropractor engaged in the independent practice of Chiropractic indicates:

1. 303 offices with receipts (\$1,000s) of 15,706 for average receipts of \$51,835 per office.

The Department of Regulation and Licensing's March of 2006 licensee count indicates that there are 1,708 chiropractors with active licenses (up to date and eligible to practice).

The effect of the rules on the practice of small business may be as follows:

1. Prior to the enactment of the new statutes and the pending proposed rules, licensed chiropractors were able to sell vitamins, herbs or nutritional supplements for the general health and well-being of their patients, however the practice of recommending, counseling or directing patients to take vitamins, herbs or nutritional supplements were prohibited by their scope of practice, and administrative rules governing conduct.

2. The proposed rules will allow chiropractors, who elect to take the prescribed 48 hour program under the rules and pay the \$25 fee to the Department of Regulation and Licensing will be able to expand their scope of practice by providing nutritional counseling, guidance and recommendations for vitamins, herbs or nutritional supplements. This is seen as a substantial business benefit through the generation of additional revenues and enhanced patient care.

3. The proposed rules will prohibit chiropractors whom have not taken the prescribed 48-hour program and received their certificate from selling vitamins, herbs or nutritional supplements. This practice is being eliminated as it prevents confusion to the consumer who may have difficulty discerning those chiropractors whom are allowed to provide counseling and guidance in addition to selling, and those chiropractors whom are only allowed to sell vitamins, herbs or nutritional supplements. This is seen by the board as an enhancement to public safety and protection. Chiropractors who are currently selling these products, but wish not to obtain their certificate must discontinue selling these products which will have an effect on their business.

4. The board notes that in addition to the \$25 fee, the 48-hour program will have additional fiscal effect of time away from the office and subsequent lost billings, and the program may cost approximately \$1,000 or more based on the provider of the program. This cost to small business will be substantially offset and may be entirely eliminated by existing continuing education costs. Chiropractors are required by law to complete 40 hours of continuing education in the biennium. The 48-hour program may be counted toward their ongoing CE requirement in the biennium in which it is completed. This will offset the cost of the program by having it count towards their continuing education requirement, and offsetting additional cost in terms of educational dollars and time away from their practice.

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

Fiscal estimate:

The Department of Regulation and Licensing estimates that this rule will require staff time in the Division of Professional Credentialing, Division of Enforcement, and the Division of Management Services. The total staff salary and fringe is estimated at \$13,807.

Anticipated costs incurred by private sector: \$25 fee for the certificate, educational costs for the required 48 hour program.

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

Agency contact person:

Pamela Haack, Paralegal

Department of Regulation and Licensing

Office of Legal Counsel

1400 East Washington Avenue, Room 152

P.O. Box 8935

Madison, Wisconsin 53708-8935.

Telephone: (608) 266-0495.

Email: pamela.haack@drl.state.wi.us.

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before July 3, 2006, to be included in the record of rule-making proceedings.

Notice of Hearing Natural Resources (Environmental Protection – Water Regulation)

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.12 (1) and (1p), 30.2035, 30.206, 227.11 (2) and 227.24, Stats., interpreting ss. 30.12 (1), (1g), (3) and (3m) and 30.206, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WT-24-06(E) pertaining to shore erosion control on rivers

and streams. This emergency order took effect on May 8, 2006. This emergency rule creates subch. III to ch. NR 328, Wis. Adm. Code, which establishes two general permits with appropriate conditions and establishes standards for projects that may be authorized under an individual permit. There are no statutory exemptions for the placement of shore erosion control on the banks of rivers and streams.

Standards for general permits and individual permits are based on the science of fluvial geomorphology for determining erosive conditions at a site. Fluvial geomorphology involves studying the influence of flowing surface water on stream channels through the processes of erosion and deposition. This emergency rule establishes general permits for biostabilization and integrated bank protection on waterways less than 35 feet wide and allows placement of these structures in "areas of special natural resource interest".

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

Tuesday, **June 13, 2006** at 3:00 p.m.

Room 413, GEF #2 State Office Building

101 South Webster Street

Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Roberta Lund at (608) 266-2220 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Effect

According to 2004 data, there were 240 permits processed for shore protection on rivers and streams. Of that amount, 216 required an individual permit at a cost of \$300 and 24 were exempt from a permit fee because they were issued to state or federal agencies. Therefore, annual permit revenue under current law is estimated to be \$64,800 (216 individual permits x \$300).

Under the proposed emergency rule, it is estimated that 180 projects would require a \$300 individual permit, 36 projects would be eligible for one of two new \$50 general permits, and 24 would continue to be fee-exempt because they would be issued to a state or federal agency. Therefore, annual permit revenue under the proposed rule is estimated to be \$55,800 [(180 individual permits x \$300) + (36 general permits x \$50)]. This will result in a decrease of \$9,000 in annual permit revenue.

By converting an estimated 36 individual permits per year to general permits, the proposed emergency rule would streamline the permitting process and thus decrease the amount of workload needed to process permits by 630 hours, or 0.35 FTE, with an associated cost reduction of \$20,200 in salary and fringe benefits (630 hours x \$32/hour salary and fringe).

The emergency rule be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Paul Cunningham, Bureau of Fisheries Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until June 23, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be

obtained from Ms. Roberta Lund, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707

Notice of Hearings
Natural Resources
(Environmental Protection – Air Pollution
Control)
[CR 06–047]

NOTICE IS HEREBY GIVEN that pursuant to ss. 285.11 (1) and (6) and 285.60 (6), Stats., interpreting s. 285.60 (6), Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 406.02, 406.04, 407.03 and 410.03, Wis. Adm. Code, relating to air pollution permit exemptions and air pollution permit exemption fees. The State Implementation Plan developed under s. 285.11 (6), Stats., is also revised. In 2003, s. 285.60 (6) (b), Stats., was created as part of 2003 Wisconsin Act 118. This law requires the Department to exempt minor sources from the requirement to obtain air permits if emissions from the source do not present a significant hazards to public health, safety, welfare or to the environment. The Department has examined current permit exemptions in light of this and believes that an expansion of those exemptions is required under the statutes. The proposed rule changes contain the following three elements:

1. Exemption from operation and construction permitting requirements for facilities which have actual emissions of each criteria pollutant (other than lead) of less than 10 tons/year, and which are not subject to additional control requirements such as federal hazardous air pollutant standards.

2. Exemption from construction permitting requirements of any construction/modification type of project at a facility where the project will have actual emissions of criteria pollutants (other than lead) of less than 10 tons/year, and which is not subject to additional control requirements such as federal hazardous air pollutant standards.

3. Add an \$800 exemption review fee for all projects which claim exemption under #2.

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

a. Types of small businesses affected: Small businesses which have very low emissions or which add additional equipment with very low emissions will be affected. Examples are coating facilities and small printers.

b. Description of reporting and bookkeeping procedures required: The proposed rule change does not create any significant additional reporting or bookkeeping requirements.

c. Description of professional skills required: The proposed rule change does not create an additional need for professional skills.

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

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch.

NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266–2856 with specific information on your request at least 10 days before the date of the scheduled hearing.

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

Tuesday, **June 27, 2006** at 1:00 p.m.

Prairie Room (lower level), Charles M. White Public Library, 1001 Main Street,
Stevens Point

Wednesday, **June 28, 2006** at 1:00 p.m.

Room GO9, GEF #2 State Office Building
101 South Webster Street
Madison

Thursday, **June 29, 2006** at 1:00 p.m.

Room 141, DNR Southeast Region Hdqrs.
2300 N. Dr. Martin Luther King Jr. Dr.
Milwaukee

Fiscal Estimate

The construction permit exemption is estimated to allow for 40 projects per year that currently require a construction permit to be exempt from that requirement. However, these projects will still require the department to issue an operation permit or to revise an existing operation permit. Based on an estimated loss of 40 construction permits per year, and an average cost per construction permit of \$6,000, the revenue loss would be \$240,000/year. With the proposed \$800 exemption fee, the gain in fees would be \$32,000/year (40 exemptions at \$800 per exemption) for a net loss of funds of \$208,000/year.

Any reduced workload from permit writing will likely be shifted to ensuring the exempted sources are in compliance with air requirements.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Steve Dunn, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until June 30, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707.

Notice of Hearing
Pharmacy Examining Board
[CR 06–052]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (d), Stats., and interpreting ss. 450.02 (3) (d) and (e) and 450.11 (8) (a), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend Phar 8.02 (3) (f), relating to controlled substances theft and loss reporting requirements.

Hearing Date, Time and Location

Date: June 22, 2006
Time: 9:45 a.m.
Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson Street)
 Room 121A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by July 3, 2006, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statute interpreted: Sections 450.02 (3) (d) and (e) and 450.11 (8) (a), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (d), Stats.

Explanation of agency authority: The board is authorized by statute to promulgate rules necessary for the administration and enforcement of chapters 450 and 961, Stats., and establishing minimum standards for the practice of pharmacy.

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

Plain language analysis: Wisconsin Administrative Code s. Phar 8.02 (3) (f) currently requires pharmacies, practitioners and other federal drug enforcement administration (DEA) registrants authorized to possess controlled substances to notify the regional office of the DEA, the local police, and the Pharmacy Examining Board of any theft or any loss upon discovery. The DEA requires any theft to be reported but not any loss. Only significant losses must be reported to the DEA. The intent of this proposed rule change is to conform the state controlled substances theft and loss reporting requirement for pharmacies, practitioners or other DEA registrants to federal law. The proposed rule change will eliminate the reporting of drug losses, not based on theft, by pharmacies, practitioners or other DEA registrants if the losses are not considered significant under federal law.

SECTION 1 creates the requirement for the reporting of a loss or theft of a controlled substance to the board if a pharmacy, practitioner or other DEA registrant is required to file with the DEA a report of theft or loss of controlled substances.

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

Chapter 21 CFR 13.01.74 (c) and 1301.76 (b). Federal law currently requires a DEA registrant to file a report with the DEA of any theft or significant loss of a controlled substance.

Comparison with rules in adjacent states:

Iowa

657—10.16(124) Report of theft or loss.

A registrant shall report in writing, on forms provided by the board, any theft or significant loss of any controlled substance upon discovery of the theft or loss. The report shall be submitted to the board office within two weeks of the discovery of the theft or loss. Thefts shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action is taken against them. A copy of the report shall be maintained in the files of the registrant.

Illinois

In every instance that a pharmacist-in-charge is required by federal law (21 CFR 1301.76) to file with the U.S. Drug Enforcement Agency a Report of Theft or Loss of Controlled Substances, Form 106, a copy shall be sent to the Division. Failure to do so may result in discipline of the pharmacist.

Michigan

R 338.3141 Thefts and diversions.

Rule 41. (1) An applicant or licensee shall provide effective controls against theft and diversion of controlled substances.

(2) A licensee shall determine that a person is licensed to possess a controlled substance before distributing the substance to the person.

(3) Within 10 days following discovery of a theft or loss of any controlled substance, a licensee shall notify the administrator of the theft or loss by submitting a United States drug enforcement administration theft and loss report form 106, a copy thereof, or equivalent document, whether or not the controlled substance is subsequently recovered or the responsible party is identified and action is taken against the party, and whether or not it is also reported to the DEA.

Minnesota

6800.4800 Reporting Controlled Substance Losses.

Any pharmacy, drug wholesaler, drug manufacturer, or controlled substance researcher detecting the theft or significant loss of any controlled substance drug, where the loss is attributable to other than inadvertent error, must report the loss, in writing, to the board and to the Drug Enforcement Administration immediately. The report must include a description of how the loss occurred, if known, the date the loss occurred, if known, the steps being taken to prevent future losses, and an inventory of the missing drugs.

Summary of factual data and analytical methodologies:

Asserting there is no uniform, objective standard to determine whether a loss is significant, and therefore subject to reporting, the United States Drug Enforcement Administration (DEA) initiated rule-making to further define what constitutes a significant loss of controlled substances. A final rule became effective on September 12, 2005. In view of the federal amendment, the Pharmacy Examining Board reviewed the Wisconsin rule, which requires notification of the DEA, the local police, and the Wisconsin Pharmacy Examining Board of any theft or loss. After considering the usefulness of loss reports, ranging from small losses to carelessness or inadvertent error to larger losses incurred for a variety of reasons, an assessment of the statutes and rules of Wisconsin's neighbors, a comparison of the relative value of maintaining a state requirement that is more comprehensive

than the federal protections, and the simplicity merits of a uniform reporting requirement, the board decided to follow the federal rule.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The rule change will result in less reporting for small business pharmacies, which currently must report any theft or loss to the local police, in addition to the United States Drug Enforcement Administration and the Wisconsin Pharmacy Examining Board. The board's revision adopts the federal criteria for significant loss, places local police reporting within the pharmacist's discretion, and allows two weeks from the date of filing with the United States Drug Enforcement Administration for filing with the Wisconsin Pharmacy Examining Board.

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

Anticipated costs incurred by private sector:

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

Fiscal Estimate

The Department of Regulation and Licensing estimates that this rule will require staff time in the Division of Management Services. The total staff salary and fringe is estimated at \$872.

Effect on small business:

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

Agency contact person:

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

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before July 3, 2006 to be included in the record of rule-making proceedings.

Notice of Hearing Pharmacy Examining Board [CR 06-050]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.04 (3) (b), Stats., and interpreting s. 450.04 (3) (b), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal ss. Phar 17.04 (3) and (5); to amend Phar 17.04 (2) and (4) and 17.05 (2); and to create Phar 2.02 (1) (c), relating to a foreign graduate internship.

Hearing Date, Time and Location

Date: June 22, 2006
Time: 10:00 a.m.
Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson Street)
 Room 121A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by July 3, 2006, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes interpreted: Section 450.04 (3) (b), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) and 450.04 (3) (b), Stats.

Explanation of agency authority: The Wisconsin Pharmacy Examining Board is granted the authority to protect the public health, safety and welfare by establishing minimum standards for the practice of pharmacy, which includes the granting of licenses to applicants for licensure as a pharmacist who have completed an internship in the practice of pharmacy.

Related statute or rule: Current Wis. Admin. Code ss. Phar 2.02, 17.04.

Plain language analysis: The Pharmacy Examining Board requires foreign pharmacy graduates to submit proof of completion of at least 1500 hours of supervised internship prior to advancing in the application process toward the granting of a pharmacy license. The hours must be verified by the department. Wisconsin pharmacy rules require a graduate of a foreign pharmacy school to apply for a license as a pharmacist prior to beginning the required internship. Foreign Pharmacy Graduate Education Committee (FPGEC) certification, including passage of the examination, is not currently required unless the applicant exceeds 2000 internship hours. The current foreign graduate internship rules could be improved to ensure hours are adequately tracked by interns and supervisors and filed timely and accurately with the department. The rules do not require that a supervisor be identified prior to beginning an internship, resulting in incomplete reporting and difficulty in tracking internship hours.

The two primary objectives of this proposed rule-making are to: 1) require passage of the FPGEC prior to accumulation of any internship hours; and 2) improve procedures concerning the reporting of internship hours by foreign pharmacy graduate applicants and their supervisors.

The proposed rules would require completion of the examination offered by the FPGEC and submission of a report to the department identifying the intern's supervisor prior to the start of a foreign graduate internship.

SECTION 1 adds the application requirement that a person intending to engage in a foreign graduate internship must submit evidence satisfactory to the board of having obtained certification by the FPGEC and the disclosure of the person's supervising pharmacist. Any change of a supervising pharmacist must also be disclosed to the board by filing an amendment to the application. SECTION 1 also adds the

requirement that prior to performing duties as an intern or to receiving credit for hours participating in a foreign graduate internship a person must file an application with the board for original licensure and submit evidence satisfactory to the board of having obtained certification by the FPGEC.

SECTION 2 adds the requirement that prior to performing duties as an intern or receiving credit for hours in an internship in the practice of pharmacy a supervising pharmacist shall be disclosed in the initial application and any change of a supervising pharmacist shall be disclosed to the board prior to further performing duties constituting the practice of pharmacy as an intern.

SECTION 3 repeals a provision allowing 2000 hours of practice as a pharmacy intern prior to receiving certification by the FPGEC.

SECTION 4 reduces the number of hours that may be practiced in a foreign graduate internship.

SECTION 5 repeals a grandfather provision that is no longer applicable.

SECTION 6 removes a typographical error.

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation for summary and comparison.

Comparison with rules in adjacent states:

Iowa

Requires 1500 hours of internship. Foreign Pharmacy Graduate Examination Committee (FPGEC) certification required prior to internship credit being granted.

Illinois

Requires a minimum of 400 hours of internship. The applicant must obtain prior approval of the Board before enrolling in a course of clinical instruction.

Michigan

Requires a minimum of 1000 hours of internship and Foreign Pharmacy Graduate Examination Committee (FPGEC) certification required prior to internship license being granted, which is valid for a period of two years.

Minnesota

Requires 1600 hours of internship, after FPGEC certification.

Summary of factual data and analytical methodologies:

There are currently 47 foreign graduate applications in process going back to 2002. None of these applications have been completed for licensure or closed. It is unknown whether these individuals are practicing in Wisconsin as pharmacy interns.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: This rule change would not impact a substantial number of small businesses. The requirement for FPGEC passage prior to accumulation of hours may have a slight effect on small businesses employing, or wishing to hire, a foreign graduate intern. According to Department of Regulation and Licensing application files, 6 of the 18 foreign pharmacy graduate interns that have identified their place of employment list a smaller pharmacy. Some are in all likelihood linked with a larger pharmacy. There are 1,222 active, in-state pharmacies in Wisconsin, roughly 350 of which are estimated to be small businesses without a large pharmacy nexus. The FPGEC examination is only offered two times per year, so there may be slightly more of a delay in hiring, or in some cases, an inability to hire because of examination failure. The reduction in the number of total hours that may be worked by an intern from 3,000 to 2,000

may result in earlier termination of employment for interns who have not completed FPGEC. Employing a licensed pharmacist, if available, would increase salary costs. The statewide average wage for a pharmacist is \$33.95 per hour, according to the Department of Workforce Development. Two Milwaukee area retail pharmacies offer \$17 and \$20 to interns, without benefits except for a small amount of vacation offered by one. There are no additional bookkeeping requirements and no new form requirements, although the department will have to revise its existing internship application form.

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

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

Fiscal Estimate

The department estimates that this rule will require staff time in the Division of Professional Credentialing. The total staff salary and fringe is estimated at \$115.

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

Agency Contact

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

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before July 3, 2006 to be included in the record of rule-making proceedings.

Notice of Hearing Transportation [CR 06-049]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., interpreting s. 348.07 (4), Stats., the Department of Transportation will hold a public hearing at the following location to consider the amendment of chapter Trans 276, Wisconsin Administrative Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways:

June 20, 2006

Department of Transportation
Hill Farms State Transportation Office
Room 701 (Superior Room)
Madison, WI
10:00 AM

(Parking is available for persons with disabilities)

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.

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 85.16 (1) and 348.07 (4), Stats.

Statute Interpreted: s. 348.07 (4), Stats.

Plain Language Analysis and Summary of, and Preliminary Comparison with, Existing or Federal Regulation. In the Surface Transportation Assistance Act of 1982 (STAA), the federal government acted under the Commerce clause of the United States Constitution to provide uniform standards on vehicle length applicable in all states. The length provisions of STAA apply to truck tractor–semitrailer combinations and to truck tractor–semitrailer–trailer combinations. (See Jan. 6, 1983, Public Law 97–424, § 411) The uniform standards provide that:

- No state shall impose a limit of less than 48 feet on a semitrailer operating in a truck tractor–semitrailer combination.
- No state shall impose a length limit of less than 28 feet on any semitrailer or trailer operating in a truck tractor–semitrailer–trailer combination.
- No state may limit the length of truck tractors.
- No state shall impose an overall length limitation on commercial vehicles operating in truck tractor–semitrailer or truck tractor–semitrailer–trailer combinations.
- No state shall prohibit operation of truck tractor–semitrailer–trailer combinations.

The State of Wisconsin complied with the federal requirements outlined above by enacting 1983 Wisconsin Act 78 which amended § 348.07 (2), Stats., and § 348.08 (1), Stats. This act created §§ 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created § 348.07 (2) (gr), Stats., to add 53 foot semitrailers as part of a two vehicle combination to the types of vehicles that may operate along with STAA authorized vehicles. (See 1985 Wisconsin Act 165)

The vehicles authorized by the STAA may operate on the national system of interstate and defense highways and on those federal aid primary highways designated by regulation of the secretary of the United States Department of Transportation. In 1984 the USDOT adopted 23 CFR Part 658 which in Appendix A lists the highways in each state upon which STAA authorized vehicles may operate. Collectively these highways are known as the National Network. In 1983 Wisconsin Act 78, the legislature enacted § 348.07(4), Stats., which directs the Wisconsin Department of Transportation to adopt a rule designating the highways in Wisconsin on which STAA authorized vehicles may be operated consistent with federal regulations.

The Department of Transportation first adopted ch. Trans 276 of the Wisconsin Administrative Code in December of 1984. The rule is consistent with 23 CFR Part 658 in that the Wisconsin rule designates all of the highways in Wisconsin that are listed in 23 CFR Part 658 as part of the National Network for STAA authorized vehicles. The federal regulation does not prohibit states from allowing operation of STAA authorized vehicles on additional state highways. The rule making authority granted to the Wisconsin Department of Transportation in § 348.07 (4), Stats., allows the DOT to add routes in Wisconsin consistent with public safety. The rule making process also provides a mechanism to review requests from businesses and shipping firms for access to the designated highway system for points of origin and delivery beyond 5 miles from a designated route. A process to review and respond to requests for reasonable access is required by 23 CFR Part 658.

This rule proposes to amend s. Trans 276.07 (28) and (31m), Wisconsin Administrative Code, to add two segments of highway to the designated highway system established under s. 348.07 (4), Stats. The actual highway segments that this rule adds to the designated highway system are:

Hwy.	From	To
CTH T	USH 12	STH 29
CTH F	STH 124	85 th Avenue

The long trucks to which this rule applies are those with 53–foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin’s regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin’s highways without a permit: A single vehicle with an overall length in excess of 40 feet, a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07 (2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

The effect of this rule will be to extend the provisions of s. 348.07 (2) (f), (fm), (gm) and (gr), and s. 348.08 (1) (e), Stats., to the highway segments listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly–designated highway. Specifically, this means there will be no overall length limitation for a tractor–semitrailer combination, a double bottom or an automobile haulaway on the affected highway segment. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor–semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segment provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on this highway segment provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

2005 Wisconsin Act 363. 2005 Wis. Act 363 amends s. 348.07 (4), Stats., effective August 1, 2006. That Act also requires the Department to promulgate emergency and permanent rules governing long trucks. It’s effect on this proposed rule change has not been determined.

Comparison with Rules in Adjacent States: None of the states adjacent to Wisconsin (Michigan, Minnesota, Illinois and Iowa) have administrative rules relating to long truck routes in their states.

¹ The rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

² 45–foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: Due to the federal requirement that requests for access to the designated highway system in a state be decided within 90 days of the request, a proposed rule making to add requested routes is initiated without investigation. The public hearing and Department investigation undertaken in preparation for the hearing provide the engineering and economic data needed to make a final decision on whether to withdraw the proposal or proceed to final rule making. In addition, Department review and rule making in response to the enactment of 2005 Wis. Act 363 may affect the Department's final decision on this rule making.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: The provisions of this rule adding two highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes. 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.

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 Ashwani Sharma, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707-7986. You may also contact Mr. Sharma by phone at (608) 266-1273.

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 [CR 06-048]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., interpreting s. 348.07 (4), Stats., the Department of Transportation will hold a public hearing at the following location to consider the amendment of chapter Trans 276, Wisconsin Administrative Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways:

June 16, 2006

Department of Transportation
Hill Farms State Transportation Office
Room 501 (Eau Claire Room)
Madison, WI

10:00 AM

(Parking is available for persons with disabilities)

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.

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 85.16 (1) and 348.07 (4), Stats.

Statute Interpreted: s. 348.07 (4), Stats.

Plain Language Analysis and Summary of, and Preliminary Comparison with, Existing or Federal Regulation. In the Surface Transportation Assistance Act of 1982 (STAA), the federal government acted under the Commerce clause of the United States Constitution to provide uniform standards on vehicle length applicable in all states. The length provisions of STAA apply to truck tractor-semitrailer combinations and to truck tractor-semitrailer-trailer combinations. (See Jan. 6, 1983, Public Law 97-424, § 411) The uniform standards provide that:

- No state shall impose a limit of less than 48 feet on a semitrailer operating in a truck tractor-semitrailer combination.
- No state shall impose a length limit of less than 28 feet on any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination.
- No state may limit the length of truck tractors.
- No state shall impose an overall length limitation on commercial vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations.
- No state shall prohibit operation of truck tractor-semitrailer-trailer combinations.

The State of Wisconsin complied with the federal requirements outlined above by enacting 1983 Wisconsin Act 78 which amended § 348.07 (2), Stats., and § 348.08 (1), Stats. This act created §§ 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created § 348.07 (2) (gr), Stats., to add 53 foot semitrailers as part of a two vehicle combination to the types of vehicles that may operate along with STAA authorized vehicles. (See 1985 Wisconsin Act 165)

The vehicles authorized by the STAA may operate on the national system of interstate and defense highways and on those federal aid primary highways designated by regulation of the secretary of the United States Department of Transportation. In 1984 the USDOT adopted 23 CFR Part 658 which in Appendix A lists the highways in each state upon which STAA authorized vehicles may operate. Collectively these highways are known as the National Network. In 1983 Wisconsin Act 78, the legislature enacted § 348.07 (4), Stats., which directs the Wisconsin Department of Transportation to adopt a rule designating the highways in Wisconsin on which STAA authorized vehicles may be operated consistent with federal regulations.

The Department of Transportation first adopted ch. Trans 276 of the Wisconsin Administrative Code in December of 1984. The rule is consistent with 23 CFR Part 658 in that the Wisconsin rule designates all of the highways in Wisconsin that are listed in 23 CFR Part 658 as part of the National Network for STAA authorized vehicles. The federal regulation does not prohibit states from allowing operation of STAA authorized vehicles on additional state highways. The rule making authority granted to the Wisconsin Department of Transportation in § 348.07 (4), Stats., allows the DOT to add routes in Wisconsin consistent with public safety. The rule making process also provides a mechanism to review

requests from businesses and shipping firms for access to the designated highway system for points of origin and delivery beyond 5 miles from a designated route. A process to review and respond to requests for reasonable access is required by 23 CFR Part 658.

This rule proposes to amend s. Trans 276.07(8), Wisconsin Administrative Code, to add one segment of highway to the designated highway system established under s. 348.07(4), Stats. The actual highway segment¹ that this rule adds to the designated highway system is:

Hwy.	From	To
STH 35	Frederic	Siren

The long trucks to which this rule applies are those with 53-foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin's regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin's highways without a permit: A single vehicle with an overall length in excess of 40 feet², a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07 (2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

The effect of this rule will be to extend the provisions of s. 348.07 (2) (f), (fm), (gm) and (gr), and s. 348.08 (1) (e), Stats., to the highway segment listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly-designated highway. Specifically, this means there will be no overall length limitation for a tractor-semitrailer combination, a double bottom or an automobile haulaway on the affected highway segment. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor-semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segment provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on this highway segment provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle

¹ The rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

² 45-foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

assembly or points of loading or unloading.

2005 Wisconsin Act 363. 2005 Wis. Act 363 amends s. 348.07 (4), Stats., effective August 1, 2006. That Act also requires the Department to promulgate emergency and permanent rules governing long trucks. Its effect on this proposed rule change has not been determined.

Comparison with Rules in Adjacent States: None of the states adjacent to Wisconsin (Michigan, Minnesota, Illinois and Iowa) have administrative rules relating to long truck routes in their states.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: Due to the federal requirement that requests for access to the designated highway system in a state be decided within 90 days of the request, a proposed rule making to add requested routes is initiated without investigation. The public hearing and Department investigation undertaken in preparation for the hearing provide the engineering and economic data needed to make a final decision on whether to withdraw the proposal or proceed to final rule making. In addition, Department review and rule making in response to the enactment of 2005 Wis. Act 363 may affect the Department's final decision on this rule making.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: The provisions of this rule adding a highway segment to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes. 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.

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 Ashwani Sharma, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707-7986. You may also contact Mr. Sharma by phone at (608) 266-1273.

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>.

Submittal of proposed rules to the legislature

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

Natural Resources

(CR 05–089)

Chs. NR 102 and 207, relating to water quality classifications in the Lake Superior basin and the related antidegradation procedures for WPDES permits.

Veterans Affairs

(CR 06–020)

Ch. VA 16, relating to the county transportation services grant program.

Natural Resources

(CR 06–013)

Ch. NR 10, relating to deer hunting as it relates to the control and eradication of chronic wasting disease.

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.

Employment Relations Commission (CR 02-037)

An order affecting chs. ERC 1 to 26, 28, 30 to 33, 40 and 50, relating to the administration of collective bargaining laws.

Effective 7-1-06.

Insurance (CR 06-002)

An order affecting ch. Ins 17, relating to fund fees fiscal year 2007.

Effective 7-1-06.

Natural Resources (CR 05-084)

An order affecting ch. NR 118, relating to management zone designations in the Lower St. Croix National Scenic Riverway.

Effective 7-1-06.

Natural Resources (CR 05-086)

An order affecting ch. NR 10, relating to deer hunting season and permit issuance regulation changes.

Effective 7-1-06.

Natural Resources (CR 05-100)

An order affecting ch. NR 192, relating to lake monitoring contracts and the citizen lake monitoring network.

Effective 7-1-06.

Natural Resources (CR 05-102)

An order affecting ch. NR 10, relating to small game and expanded spring turkey hunting in state parks.

Effective 7-1-06.

Rules published with this register and final regulatory flexibility analyses

*The following administrative rule orders have been adopted and published in the **May 31, 2006**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Administration (CR 05-069)

An order affecting chs. Adm 20 and 21, relating to architecture, engineering and construction solicitation, bidding and contracting. Effective 6-1-06.

Summary of Final Regulatory Flexibility Analysis

The department does not foresee any negative impact on small businesses. The rule will provide less restrictive requirements, added access to the department via other media and changes in dollar thresholds, the department foresees a positive impact.

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce (CR 05-110)

An order affecting ch. Comm 155, relating to interest on real estate trust accounts. Effective 6-1-06.

Summary of Final Regulatory Flexibility Analysis

Section 452.13 (2) (e) 1. of the Statutes requires financial institutions to submit IRETA information to the Department annually by February 1. The proposed rules of Clearinghouse Rule No. 05-110 are minimum requirements to meet the directives of Statutes, and any exceptions from compliance for small businesses would be contrary to the statutory objectives which are the basis for the rules. Financial institutions may use their own form to report the IRETA information provided their form contains the same information as the department form.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources (CR 05-087)

An order affecting chs. NR 46 and 47, relating to the administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program. Effective 6-1-06.

Summary of Final Regulatory Flexibility Analysis

This rule does affect small businesses – specifically cooperating foresters qualified as a Certified Plan Writer may see an increase in business. Small businesses that are petitioning to enter land into the Managed Forest Law could be impacted negatively by the increased cost for the

preparation of a management plan, either due to the cost of hiring a Certified Plan Writer or the plan preparation fee that will be collected if the department agrees to prepare the plan. The Managed Forest Law is a voluntary program and landowners have the opportunity to shop around for better prices.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Forestry and the Senate Committee on Natural Resources and Transportation. No comments were received.

Natural Resources (CR 05-106)

An order affecting ch. NR 47, relating to master logging certification scholarships. Effective 6-1-06.

Summary of Final Regulatory Flexibility Analysis

This rule does affect loggers in a voluntary, positive manner. The rule does not impose any compliance or reporting requirements on the loggers, nor are any design or operational standards contained in the rule. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Forestry and the Senate Committee on Natural Resources and Transportation. No comments were received.

Public Service Commission (CR 05-079)

An order affecting ch. PSC 111, relating to rules concerning the establishment of capital cost ratemaking principles for certain rate base electric generating facilities. Effective 6-1-06.

Summary of Final Regulatory Flexibility Analysis

The rules being created apply to a public utility that has or expects to have electric generating facilities in this state and provides electric service to end users in this state. It is unlikely that any such entity would be a small business as defined in 2. 227.114 (1), Stats. Therefore, the proposed rules are not expected to affect small businesses as defined in s. 227.114 (1), Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

**Transportation
(CR 06-003)**

An order affecting chs. Trans 325 and 326, relating to motor carrier safety regulations and motor carrier safety requirements for transportation of hazardous materials. Effective 6-1-06.

Summary of Final Regulatory Flexibility Analysis

All businesses will have the same effect. There is no differentiation between small business and large business.

**Summary of Comments by Legislative Review
Committees**

No comments were received.

**Veterans Affairs
(CR 05-103)**

An order affecting ch. VA 13, relating to the veterans assistance program. Effective 6-1-06.

Summary of Final Regulatory Flexibility Analysis

No effect on small business.

**Summary of Comments by Legislative Review
Committees**

No comments were received.

**Workforce Development
(CR 06-004)**

An order affecting chs. DWD 290 and 293, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements. Effective 6-1-06.

Summary of Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis is not required because the rule will not have a significant impact on a substantial number of small business as defined in s. 227.114, Stats.

**Summary of Comments by Legislative Review
Committees**

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **May 2006**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Administration

Ch. Adm 20

- S. Adm 20.02
- S. Adm 20.03 (1), (2) (e) and (4)
- S. Adm 20.04
- S. Adm 20.05
- S. Adm 20.06 (1) (c), (e), (g) and (h)
- S. Adm 20.07 (3) (f) and (4)
- S. Adm 20.08 (1), (5), (6), (8) and (9)
- S. Adm 20.09 (2), (3) (b) and (c)
- S. Adm 20.10 (4) and (5)

Ch. Adm 21

- S. Adm 21.01 (2)
- S. Adm 21.02
- S. 21.05 (2) and (5)
- S. 21.09 (4)

Commerce

Ch. Comm 155

- S. Comm 155.06

Natural Resources

Ch. NR 46

- S. NR 46.15 (18m) and (20s)
- S. NR 46.165 (4) (f) and (6) (a)
- S. NR 46.18 (5) (a) and (b), (7) and (8)

Ch. NR 47

- S. NR 47.85 (2) (a)
- S. NR 47.86 (3) (a) and (c)
- S. NR 47.87 (9) and (10)
- S. NR 47.92

Public Service Commission

Ch. PSC 111

- SS. PSC 111.61 to 111.65

Transportation

Ch. Trans 325

- S. Trans 325.02 (intro.) and (8)

Ch. Trans 326

- S. Trans 326.01 (intro.) and (8)

Veterans Affairs

Ch. VA 13

- S. VA 13.04 (4)
- S. VA 13.05 (2)

Workforce Development

Ch. DWD 290

- S. DWD 290.155 (1)

Ch. DWD 293

- S. DWD 293.02

Editorial corrections

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

Natural Resources

Ch. NR 538

- S. NR 538.12 (3), (4) and (5)

Sections affected by revisor's corrections not published

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

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

Location of invalid cross-reference	Invalid cross-reference	Correction
Comm 5.10 (2) (a) 4.	145.245 (3)	145.20 (5)
DOC 346.03 (6) and (16)	48.02 (16)	48.02 (10r)
DFI-CU 66.01	186.113 (1m)	Delete reference
ETF 10.70 (3) (a)	40.07 (1) (a)	40.07 (1m) (a)
ETF 10.82 (2) (f) 2. a.	40.07 (1) (c)	40.07 (1m) (c)
HFS 1.07 (1)	938.183 (2)	938.183 (1m) (c) 3.
HFS 10.23 (7) (b) and 10.45 (5) (b)	55.06 (17) (c)	55.22
HFS 34.22 (1) (a) 6.	55.06 (11)	55.135
HFS 36.07 (3) (b)	55.06 (11)	55.135
HFS 83.06 (5) (a), (b) and (c)	55.06	ch. 55
HFS 83.06 (5) (c)	55.05 (5) (c)	55.055 (3)
HFS 83.20 (2) (a) 1.	55.06	ch. 55
HFS 83.20 (2) (a) 2.	55.05 (5) (c)	55.055 (3)
HFS 85.03 (12)	55.06	ch. 55
HFS 118.02 (5)	146.56 (1)	146.56 (1r)
HFS 134.33 (3) (a) 2.	55.06	ch. 55
HFS 190.02 (2)	48.02 (16)	48.02 (10r)
Jus 10.03 (14)	895.20	995.20
Jus 16.01 (1)	895.12 (2) (b)	995.12 (2) (b)
Jus 16.01 (3)	895.10 (1) (i)	995.10 (1) (i)
Jus 16.03 (1) and 16.04 (2) (c)	895.10 (2)	995.10 (2)
Jus 16.04 (1) (a) and (2) (b)	895.12 (2) (a)	995.12 (2) (a)
Jus 16.04 (1) (c) and 16.05 (1)	895.12	995.12
KB 1.05 (9)	174.056	106.52 (1) (fm)
LES 1.03 (16)	48.02 (16)	48.02 (10r)
NR 25.02 (19)	29.519 (1) (a)	29.519 (1m) (a)
NR 45.06 (8)	174.056	106.52 (1) (fm)
RL 150.02 (10)	subch. XII of ch. 440, Stats.	subch. XIII of ch. 440, Stats.

Location of invalid cross-reference	Invalid cross-reference	Correction
Tax 9.69 (2) (a) (b) (c) (e)	895.10 (1) (d) 895.10 (1) (e) 895.10 (1) (f) 895.10 (1) (i)	995.10 (1) (d) 995.10 (1) (e) 995.10 (1) (f) 995.10 (1) (i)
Tax 9.69 (4) (a)	895.10 (2) (b)	995.10 (2) (b)
Tax 9.69 (6)	895.10 (2) (b) 1. 895.10 (2) (b) 3.	995.10 (2) (b) 1. 995.10 (2) (b) 3.
Trans 176.01 (2)	344.52 (1)	344.52 (1r)
Trans 250.03	348.26 (5), 348.17 (3), and (4)	348.17 and 348.26 (5)
Trans 300.16 (2)	174.056 (1)	106.52 (3) (am)
Trans 301.05 (8)	174.056	106.52 (3) (am)
Trans 330.05 (2)	174.056 (1)	106.52 (3) (am)
DWD 129.01 (2) (b) 2.	895.20	995.20
DWD 140.01 (2) (a)	895.20	995.20

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 149. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Peace Officers who have given their lives in the line of duty.

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, Wisconsin 53707-7840



First Class Mail

Dated Material. Please Do Not Delay!