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Emergency rules now in effect

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

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

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

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

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

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

Administration

Rules adopted revising **ch. Adm 10**, relating to cost benefit analyses of contractual services.

Exemption from Finding of Emergency

Section 8(2) of 2005 Wisconsin Act 89 requires the Department of Administration to promulgate rules required under ss. 16.004 (1), 16.705 (2) and 227.11 Stats., by using the emergency rulemaking procedure under s. 227.24, Stats., except that the department is not required to provide evidence that the emergency rule is necessary for the preservation of public peace, health, safety or welfare and is not required to provide a finding of emergency.

Plain language analysis

The department intends to promulgate a rule as required by Act 89 to require a cost-benefit analysis to be completed for each bid or request for proposal to compare the cost of contracting for services versus providing the services with state employees.

Currently, all state agencies and UW System campuses may contract for services between \$25,000 and \$200,000 if they can show that the services can be performed more economically or efficiently by such a contract than by state employees. Currently, if the contractual services would be greater than \$200,000, the contracting agency must complete a more rigorous and detailed cost/benefit analysis to demonstrate that the services can be performed more economically or efficiently by such a contract than by state employees. This more rigorous and detailed analysis includes total cost, quality and nature of services required, specialized

skills, time factors, risk factors and legal barriers. Act 89 requires agencies to conduct uniform cost-benefit analysis of each proposed contractual service procurement involving an estimated expenditure of more than \$25,000 in accordance with standards prescribed in the rules. Cost benefit-analysis is defined to include total cost, quality, technical expertise and timeliness of a service.

Act 89 also requires agencies to review periodically, and before any renewal, the continued appropriateness of contracting under each services agreement involving an estimated expenditure of more than \$25,000. Act 89 requires the department to complete an annual summary report of the cost benefit-analysis prepared by state agencies in the preceding fiscal year and recommendations for elimination of unneeded contractual service procurements and for the consolidation or resolicitation of existing contractual service procurements.

Publication Date:	July 1, 2006
Effective Date:	July 1, 2006
Expiration Date:	November 28, 2006
Hearing Date:	August 10, 2006
	[See Notice this Register]

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
Extension Through: September 29, 2006

Commerce (Financial Resources for Business and Communities, Chs. Comm 105 to 131)

Rule adopted creating **ch. Comm 131**, relating to diesel truck idling reduction grants.

Exemption from Finding of Emergency

The legislature by Section 9108 (1w) in 2005 Wisconsin Act 25, provides an exemption from a finding of emergency for the adoption of this rule.

The rules specify who is eligible for receiving a grant in this program for purchasing and installing diesel truck idling reduction equipment. Eligible costs are also specified, along with how to apply for the grants. Parameters for awarding the grants are likewise specified. These parameters include (1) disallowing grants to any applicant who is failing to comply with any conditions imposed on any previous grant received in this program; and (2) alerting applicants that the Department may (a) refuse to award grants for idling reduction equipment on truck tractors that do not have a sleeper berth, (b) annually allocate up to 25 percent of the grant funding to applicants who own and operate 50 or fewer truck tractors, and (c) set deadlines for submitting applications, and then prorate the awards to the applicants if the total funding requested in the applications exceeds the available revenue.

Publication Date: June 30, 2006
Effective Date: July 1, 2006
Expiration Date: November 28, 2006
Hearing Date: July 25, 2006
 [See Notice this Register]

Corrections

A rule was adopted creating **s. DOC 332.19**, relating to a sex offender registration fee.

Finding of Emergency

The department of corrections finds that an emergency exists and that rules are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is: Under 2005 WI Act 25, the legislature authorized the department to establish a sex offender registration fee. If the rule is not created promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of monitoring probationers, parolees, or persons on extended supervision, which could result in a lessening of supervision due to budget limitations.

The purpose of the emergency rule is to establish an annual sex offender registration fee to partially offset the costs of monitoring persons who are on probation, parole, or extended supervision. The permanent rule process has been started.

However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of fees while permanent rules are being developed.

Publication Date: June 8, 2006
Effective Date: June 8, 2006
Expiration Date: November 5, 2006
Hearing Date: July 18, 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.

Emergency Management

Rule adopted creating **ch. WEM 7**, relating to disaster assistance for local governments.

Finding of Emergency

The Wisconsin Division of Emergency Management 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 an emergency is as follows:

1. The 2005 Wis. Act 269 created the major disaster assistance program under Wis. Stats. § 166.03 (2) (b) 9. An annual appropriation of \$3,000,000 SEG A for fiscal years 2005-06 and 2006-07 was established under Wis. Stats. § 20.465 (3) (b) (s) from the petroleum inspection fund. These funds were provided to make payments to local units of government for damages and costs incurred as a result of a major catastrophe. This Act was made retroactive to January 1, 2005.

2. The Act requires the Wisconsin Department of Military Affairs, through its Division of Emergency Management, to promulgate rules to implement and establish the application process and the criteria to determine eligibility under the major disaster assistance program. The Division will immediately begin the permanent rule-making process for establishing administrative rules for these payments, but cannot complete the required hearings and review of these rules prior to the lapse of funds retained in the major disaster assistance appropriation for fiscal year 2005-06.

3. To ensure that appropriated funds for fiscal year 2005-06 are timely paid to local governmental units for damages and eligible costs incurred as a direct result of major catastrophes, emergency administrative rules must be established immediately.

Publication Date: June 8, 2006
Effective Date: June 8, 2006
Expiration Date: November 5, 2006

Health and Family Services

Rules were adopted revising **chs. HFS 110 and 111**, relating to licensing emergency medical technicians and affecting small businesses.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public, health, safety and welfare.

The facts constituting the emergency are as follows:

In Wisconsin there are approximately 430 ambulance service providers. Approximately 80% are volunteer (not for profit) or owned by private for profit entities. The remaining 20% are government owned. A total of 129 ambulance service providers and 2,812 licensed individuals in 48 counties currently provide emergency medical services at the EMT-basic-IV (74) or EMT-provisional intermediate (55) level to approximately 2.65 million Wisconsin residents. The provider industry estimates that these ambulance service providers are losing approximately \$1.5 million dollars in reimbursement revenues annually due to the codification of the EMT-basic IV services in ch. HFS 110 as basic life support. The loss is likely to increase when the provisional

EMT–intermediate is renamed EMT–basic IV effective July 1, 2006, and an estimated 95% of the individuals who are currently licensed and titled as provisional EMT–intermediate will be renamed EMT–basic IV. Ambulance service providers report that they cannot continue to cover the costs of training and operating at the advanced life support level of care while being reimbursed at the basic life support level of care. Consequently, the level of emergency medical services provided in over half of the state’s 72 counties may be reduced or become non–existent unless changes are implemented.

To maintain the level of emergency medical services that are currently being provided and to avoid confusion about the skills and level of care provided by the EMT–basic IV licensee, the department in these emergency rules is changing the name of the EMT–basic IV license to EMT–intermediate technician and moving the licensing requirements to ch. HFS 111. These changes will allow ambulance service providers to charge for both at the higher rate of reimbursement. In addition, these emergency rules will modify the continuing education requirements under ch. HFS 110 to allow ambulance service providers flexibility in providing refresher training to EMT–basic licensees. This change will reduce financial and scheduling burdens on providers by allowing them to use their training dollars more cost effectively.

Publication Date: July 1, 2006
Effective Date: July 1, 2006
Expiration Date: November 28, 2006
Hearing Dates: July 25, 26 and 27, 2006
 [See Notice this Register]

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: September 10, 2006

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

Plain Language Analysis

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

Exemption from finding of emergency

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

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

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

Finding of Emergency

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

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

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

Finding of Emergency

It is important to have restrictions on out–of–state firewood entering department lands in place this camping season due to recent developments in efforts to eradicate and quarantine emerald ash borer in the areas where it is currently established. In Michigan, Ohio, Indiana and Ontario, eradication programs are being dramatically scaled back or abandoned entirely for this summer. A recent audit of quarantine efforts in Michigan where emerald ash borer is most abundant and widespread is critical and faults their program for lax enforcement and poor education of the public to the dangers of moving firewood. Given this situation, a

need for an external quarantine to protect Wisconsin forest resources, industry, and community trees becomes obvious. The Wisconsin Department of Agriculture, Trade and Consumer Protection has proposed an external quarantine on host material of emerald ash borer and three other invasive pests and diseases and our firewood regulation would help support this effort, provide an opportunity for education of the public and reduce one of the reasons people move firewood: for use while camping.

Publication Date: March 27, 2006
Effective Date: April 1, 2006
Expiration Date: August 29, 2006
Hearing Date: July 5, 2006

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.

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

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

Finding of emergency

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

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

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

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

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

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

Finding of Emergency

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

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2006 construction season, with specific standards for shore erosion control structures on rivers and streams.

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

Regulation and Licensing

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

Plain language analysis

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

The Department of Regulation and Licensing must promulgate this emergency rule for the period before the effective date of the permanent rules as promulgated under Wis. Stats. s. 440.88 (3). Under the previous regulatory

scheme, the Department of Health and Family Services and the Wisconsin Certification Board had established a code of conduct and restrictions on late renewals. This emergency rule continues the applicability of the rules until the department, with the advice of the Advisory Committee, can establish permanent rules.

Exemption from finding of emergency

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

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

Transportation

Rules adopted creating **ch. Trans 515**, relating to contractual service procurement.

Exemption from finding of emergency

The Legislature, by Section 8 of 2005 Wis. Act 89, provides an exemption from a finding of emergency for the adoption of the rule.

Analysis Prepared by the Department of Transportation

The proposed rule requires a cost benefit analysis before procuring engineering or other specialized services under s. 84.01 (13), Stats., in excess of \$25,000 when those services are normally performed by state employees. The required analysis includes a comparison between the costs of contracting out and performing the services with state employees. The analysis also considers other subjective factors such as timeliness, quality and technical expertise.

Publication Date: July 1, 2006
Effective Date: July 1, 2006
Expiration Date: November 28, 2006
Hearing Date: August 8, 2006

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

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

Finding of emergency

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

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

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

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

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

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

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

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

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

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

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Rules affect ch. ATCP 70, relating to food processing plants.

Objective of the rule. This rule will update current food processing plant rules under ch. ATCP 70. This rule will include food safety enhancements, and adapt current rules to recent changes in food processing technology and practices. This rule will *not* change current license fees for food processing plants.

Policy Analysis

Wisconsin's current food processing rules are outdated in various respects, based on changes in food science, technology and processing practices. This rule will update current rules to accommodate food safety advances, and changes in the food processing industry. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; food handling and storage; sanitary production and processing; and food sources and food labeling.

Policy Alternatives

DATCP is responsible for regulating food processing plants to ensure a safe and wholesome food supply. Regulation must keep pace with changing food science, and with changing technology and food processing practices. DATCP will consult with the food processing industry in the development of this rule.

If DATCP does nothing, current rules will remain in effect. Current rules are outdated in a number of respects, and will become increasingly outdated in relation to actual food safety, production, processing, and packaging practices currently used by Wisconsin food processing plants.

Statutory authority

Sections 93.07 (1) and 97.29 (5), Stats.

Staff time required

DATCP estimates that it will use approximately 0.5 FTE staff to develop this rule. This includes time required for analysis, rule drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

Entities affected by the rule

Licensed Wisconsin food processing plants will be affected.

Comparison with federal regulations

The United States Food and Drug Administration (FDA) administers federal food safety laws. However, most regulation and inspection of food processing plants occurs at the state level. Current federal law does not preempt state law. DATCP works cooperatively with FDA, and designs state regulation to be reasonably consistent with federal law.

Agriculture, Trade and Consumer Protection

Subject

Rules affect ch. ATCP 106, relating to price gouging during an emergency.

Objective of the rule. Adopt rules to implement newly enacted "price gouging" legislation, as mandated by the Legislature in 2005 Wis. Act 450.

Policy Analysis

Section 100.305, Stats., created by 2005 Wisconsin Act 450, prohibits a sellers from selling "consumer goods or services" at wholesale or retail at "unreasonably excessive prices" if the Governor, by executive order, has certified that the state or a part of the state is in a "period of abnormal economic disruption" due to an emergency. An emergency may include, for example, a destructive act of nature, a disruption of energy supplies that poses a serious risk to the public health or welfare, a hostile action, or a strike or civil disorder.

The Department of Agriculture, Trade and Consumer Protection ("DATCP") must adopt rules to implement the "price gouging" legislation. DATCP is specifically required to adopt rules to determine when prices are considered "unreasonably excessive."

Policy Alternatives

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

Statutory authority

Sections 93.07 (1) and 100.305 (3), Stats.

Staff time required

DATCP estimates that it will use approximately 1.0 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, holding public hearings, coordinating advisory council discussions and communicating with affected persons and groups. DATCP will assign existing staff to develop this rule.

Entities affected by the rule

Depending on the scope of a declared emergency, this rule could conceivably affect nearly every wholesaler and retailer of consumer goods in the state. A declared emergency may be statewide or localized in scope, and may broad-based or confined to certain economic sectors. The impact of this rule will vary accordingly.

Whenever it applies in an emergency, this rule will limit the prices that may be charged by affected wholesalers and retailers. This rule will prohibit prices that are "unreasonably excessive," as determined by this rule. DATCP has not yet determined what rule criteria will be used to identify prices that are "unreasonably excessive," but DATCP does not anticipate that this rule will prevent sellers from maintaining their normal markup on consumer goods and services.

The rule may benefit consumers by preventing egregious price gouging during periods of abnormal economic disruption caused by an emergency. DATCP will attempt to

develop rules that prevent egregious price gouging without aggravating market disruption.

Comparison with federal regulations

There are no federal “price gouging” prohibitions currently in effect. However, there are federal laws that set or limit prices for certain products or services in certain sectors. Some of these laws may preempt state “price gouging” provisions related to the federally–regulated products or services. For example, state law may not regulate interest rates charged by federally chartered banks, or certain prices charged by certain federally regulated common carriers. The scope and effect of federal regulation varies by industry sector, and is highly specific to individual federal programs.

Commerce

Subject

The rules affect chs. Comm 2, 5, 18, 20, 21, 61 and 62, relating to conveyance systems.

Objective of the rule. The objectives of this rule project, to be incorporated into one or more rule packages, are to implement the mandates of 2005 Wisconsin Act 456 which increases the Department’s regulatory oversight with respect to the installation, maintenance, inspection and testing of conveyance systems, such as elevators, escalators and platform lifts.

Policy Analysis

Existing policies. The Department currently administers and enforces minimum standards for the design, installation and maintenance of conveyance systems such as elevators, escalators and lifts, in public buildings and places of employment under chapter Comm 18, Elevators, Escalators and Lift Devices. This code adopts and references the 2000 edition of the ASME A17.1, Safety Code for Elevators and Escalators, and the 2001 edition of the ASME A18.1a, Safety Standard for Platform Lifts and Stairway Chairlifts. Under the code, the Department utilizes a number of compliance strategies, including the review of plans for the installation of new elevators and escalators, acceptance inspection of new conveyance systems, periodic inspection of existing conveyance systems and the issuance of permits to operate.

New policies. The rule project will reflect the new statutory mandates to:

- Establish a licensing program for elevator contractors and mechanics.
 - Requiring that a person engaged in the business of constructing, installing, altering, servicing or maintaining conveyances must be licensed.
 - Requiring that a person erecting, constructing, altering, replacing, maintaining, repairing, removing or dismantling must be licensed or under the supervision of a licensed individual.
- Expand the operating permit program to include elevators and lifts within individual residences.
- Expand the plan review and inspection program to include elevators and lifts with individual residences.
- Establish that the department standards for the design, installation and maintenance of conveyance systems are uniform with respect to application.

- Incorporate and reference the latest national standards for the design, installation and maintenance of conveyance systems, including standards for residential conveyance systems.

Statutory authority

Chapter 101, Subchapter VII as created by 2005 Wisconsin Act 456.

Staff time required

The department estimates that it will take approximately 700 hours to develop this rule. The time includes reviewing the current codes and related national standards, working with the statutory advisory council, then drafting the rules and processing the rules through public hearings, legislative review and adoption. The department will assign existing staff to perform the review and develop the rule changes. There are no other resources necessary to develop the rule.

Entities affected by the rule

The rule will affect any entity that is involved in the design, installation, alteration and maintenance of conveyance systems, elevators, escalators and lifts. The rule will also affect owners of buildings with new and existing conveyance systems, elevators, escalators and lifts.

Comparison with federal regulations

An internet–based search of the *Code of Federal Regulations* (CFR) did not find any federal regulations relating to the activities to be regulated under the rule.

Natural Resources

Subject

Chapter NR 25: Commercial fishing – outlying waters.

Policy Analysis

Objective of the rule. If the yellow perch recovery continues in Green Bay or Lake Michigan, we can expect to be pressured to increase commercial quotas in Green Bay or to re–open commercial fishing for yellow perch in Lake Michigan. Changes in yellow perch commercial harvest limits are typically controversial, with sport and commercial fishers often holding very different views of what should be done. The intent of this rule–making is to implement a system that would have harvest limits rise and fall as functions of objective measures of fish abundance, so that as yellow perch recovery continues adjustments to harvest limits will occur automatically. If abundance falls again at some time in the future, the commercial harvests would automatically be reduced. Sport and commercial fishers on Green Bay and Lake Michigan would be interested in this issue. It could be somewhat controversial.

Statutory authority

Sections 29.041, 29.014 (1), 29.519 (1) (b), and 227.11 (2) (a), Stats.

Staff time required

One month FTE (combined effort by the Great Lakes Fisheries Specialist, a staff attorney, several field biologists, and wardens).

Entities affected by the rule

The interests of both commercial and sport fishers will be affected. In the past this issue has been controversial at times.

Comparison with federal regulations

None.

Public Service Commission

Subject

Objective of the rule. This rulemaking will consider whether it may be appropriate to revise the rule regarding the standards and processes under which the Commission authorizes changes in retail rates required by changes in fuel costs electric public utilities incur to supply electricity to customers.

Policy Analysis

The Commission determines the amount Wisconsin electric public utilities may charge customers in periodic rate case proceedings. These proceedings include finding reasonable forecasts of the utility's sales, demand, revenues, and expenses for a representative test year when the new rates will be in effect. For most costs predicted for a test year, no significant difference exists between the forecasted and actual realized amounts. However, the volatile nature of the cost of fuel for generation often causes significant increases or decreases in the forecasted cost of fuel. These shifts in the cost of fuel may cause utility rates to become unjust and unreasonable, requiring a rate change. As early as the 1920s states allowed "escalator clauses," an automatic rate adjustment mechanism contained in a utility's tariff that allows for changes in rates based on a pre-approved formula triggered by a change in the cost of a specific input, like the cost of coal to fuel electric generation. More than 25 years ago the Wisconsin Legislature enacted Wis. Stats. s. 196.20 (4) prohibiting use of automatic adjustment clauses by large investor-owned electric public utilities. Instead, the statute authorized the Commission to approve, after a hearing, a rate increase for these utilities to allow for the recovery of costs caused by an emergency or extraordinary increase in the cost of fuel.

Wis. Admin. Code ch. PSC 116 implements Wis. Stats. s.

196.20 (4) under which the Commission may approve an increase or decrease in the rates of an electric public utility, as a result of an extraordinary or emergency change in the cost of fuel. The current rule reflects an update in 2002. Since 2002, events such as the implementation of Midwest Independent Transmission System Operator-Day 2 Market, increased demand on some fuels, increased transportation costs of some fuels, and the effects of hurricanes on the availability of some fuels, have increased the volatility of fuel costs.

This rule change will allow the department to issue turkey tags remaining after the initial 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.

Comparison with federal regulations

The Commission is unaware of any federal regulation in this area.

Statutory authority

Wis. Stats. ss. 196.02 (3), 196.20, and 196.37.

Staff time required

The Commission estimates that approximately 500 hours of Commission staff time will be required in this rulemaking.

Other resources necessary to develop rule

Commission staff may meet and consult with utility representatives, customers and their representatives and members of the general public during the course of this rulemaking.

Entities affected by the rule

The rulemaking will affect electric public utilities as defined by Wis. Stats. s. 196.20 (4) (a) 2., and their customers.

Submittal of rules to legislative council clearinghouse

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

Administration

On June 30, 2006, the Department of Administration submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 16.004 (1) and 227.11, Stats.

Statute Interpreted: s. 16.967 (3) and (7), Stats.

The proposed rule changes reflect recent statutory changes which include the sunset of the Wisconsin Land Information Board. The Department proposes to amend the rule to reflect the department's role in the land information programs' administration and to increase eligibility for grants to county land information offices.

Agency Procedure for Promulgation

A public hearing will be held on August 2, 2006.

Contact Person

If you have questions regarding the proposed rule, please contact:

Mike Friis
Department of Administration
Telephone: (608) 267-7982
E-Mail: michael.friis@wisconsin.gov

Agriculture, Trade and Consumer Protection

On June 29, 2006, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. ATPC 156, relating to seed potato certification and grading.

Agency Procedure for Promulgation

Public hearings will be held. The Division of Trade and Consumer Protection is primarily responsible for the rule.

Contact Person

Kevin LeRoy at (608) 224-4928

Health and Family Services

On June 21, 2006, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The department proposes to change the name of the EMT-basic IV license to EMT-intermediate technician and move the licensing requirements to ch. HFS 111. The department also proposes to modify the continuing education requirements under ch. HFS 110.

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

department knows of no existing or proposed federal regulations that address these levels of providers.

Agency Procedure for Promulgation

Public hearings will be held as follows:

July 25, 2006: 1:00 PM to 3:00 PM at the Department of Health & Family Services, 1 W. Wilson St., Rm. B139 Madison, WI; July 26, 2006: 6:00 PM to 8:00 PM at the Business Education Center,

Chippewa Valley Technical College, Room 100A (RCU Community Room), 620 West Clairemont Avenue, Eau Claire, WI; July 27, 2006: 6:00 PM to 8:00 PM, Northwest Technical College

Business Center, Room 213, 2740 West Mason Street, Green Bay, WI.

Contact Person

For substantive questions on rules contact:

Dan Williams
Department of Health and Family Services
Division of Public Health – Emergency Medical Services
1 West Wilson Street Room 118
P.O. Box 2659
Madison, WI 53701-2659
608-261-6870
willidp@dhfs.state.wi.us

For small business considerations contact:

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

For rules processing information contact:

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

Health and Family Services

On June 22, 2006, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The department proposes to create ch. HFS 137 to prescribe by rule forms for use by physicians, technicians, and tissue bank employees when removing organs and tissue, other than cardiovascular tissue from decedents.

Federal statutes or regulations which require adoption of or are relevant to the substance of proposed rules: There is no known existing or proposed federal regulation that is comparable to the proposed rules.

Agency Procedure for Promulgation

Public hearings: The proposed rules only prescribe forms. No public hearings will be held pursuant to s.

227.23, Stats. The department will, however, accept comments on the proposed rules until August 11, 2006.

Contact Persons

For substantive questions and comments on rules contact:

Martha Mallon
Bureau of Environmental and Occupational Health
1 West Wilson Street
P. O. Box 7851
Madison, WI 53707-7851
(608) 261-6854 or, if you are hearing impaired, (608) 261-9314 (TTY)
malloma@dhfs.state.wi.us

For small business considerations contact:

Rosie Greer
608-266-1279
greerrj@dhfs.state.wi.us
For rules processing information contact:
Rosie Greer
608-266-1279
greerrj@dhfs.state.wi.us

Health and Family Services

To repeal ss. HFS 61.91 to 61.98 and create ch. HFS 35, and to modify ss. HFS 105.22 and 107.13 (Medicaid rules) relating to certification of outpatient mental health clinics, and affecting small businesses.

Federal statutes or regulations which require adoption of or are relevant to the substance of proposed rules: 42 CFR 440.130 permits use of Medicaid funds to provide diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level. There are no other known proposed or existing federal regulations pertinent to outpatient mental health clinics.

Court decisions directly relevant to the proposed rule: None known.

Public hearings:

Date and Time

Tuesday, **August 1, 2006** 10:00 a.m. to 12:00 p.m. & 1:00 p.m. to 3:00 p.m.

Thursday, **August 3, 2006** 10:00 a.m. to 12:00 p.m. & 1:00 p.m. to 3:00 p.m.

Location

Mendota Mental Health Institute- Conference Center
301 Troy Drive, Madison, WI

North Central Health Care Facilities- Lakeview Center
1000 Lakeview Drive, Wausau, WI

Waukesha Regional Office, Room 151
141 NW Barstow St. Waukesha, WI

Names and phone numbers of agency contacts:

For substantive questions on rules contact:

Dan Zimmerman
Bureau of Mental Health and Substance Abuse Services
1 W. Wilson Street, Room 455
Madison, WI 53707-7851
608-266-7072
zimmeds@dhfs.state.wi.us

For small business considerations and rules processing information contact:

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

Health and Family Services

Subject: Training programs for child protective services caseworkers and supervisors.

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

The Department knows of no comparable federal regulations.

Court decisions directly relevant to the proposed rule: None known.

Public hearings: A public hearing will be held from 10:00 a.m. to 1:00 p.m. on **August 1, 2006**, at Southern Child Welfare Partnership Training Center, 455 Science Drive, Suite 110, Madison, WI; DHFS Regional Office, 1853 North Stevens Rhinelander, WI 54501 (by video conferencing); University of Wisconsin-Green Bay MAC137, 2420 Nicolet Drive, Green Bay, WI (by video conferencing).

Names and phone numbers of agency contacts:

For substantive questions on rules contact:

Christopher Sieck
Statewide Training Coordinator
Division of Children and Family Services
DHFS/DCFS
P.O. Box 8916
Madison, Wisconsin 53708-8916
(608) 266-5668
crsieck@wisc.edu

For small business considerations contact:

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

For rules processing information contact:

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

Health and Family Services

On June 28, 2006, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

To repeal and recreate ch. HFS 172, relating to pools and water attractions and affecting small businesses.

Agency Procedure for Promulgation

A public hearing will be held at 10:00 a.m. on August 9, 2006, at the Department of Health and Family Services, 1 West Wilson St., Rm. B139, Madison, WI and at 10:00 a.m. on August 10, 2006 at Marathon County Health Department, 1200 Lake View Drive, Room 200, Wausau, WI.

Contact Persons**For substantive questions on rules contact:**

Tracynda Davis
Program Manager
Swimming Pools and Water Attractions
Food Safety & Recreational Licensing
Wisconsin Division of Public Health
608-266-8294
davistl@dhfs.state.wi.us

For small business considerations contact:

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

For rules processing information contact:

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

Insurance

On June 30, 2006, the Office of the Commissioner of Insurance submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

These changes will affect ss. Ins 9.01 (5), (9m), (10m) and (13), 9.20 (intro), 9.25 (4), 9.32 (2) (a) and (f), 9.41 and 9.42 (1) and (5) (a), Wis. Adm. Code, relating to defined network plans, preferred provider plans, limited service health organizations and limited scope plans and affecting small business.

Agency Procedure for Promulgation

The date for the public hearing is August 2, 2006.

Contact Person

A copy of the proposed rule may be obtained from the WEB site at: <http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact Julie Walsh at (608) 264-8101 or e-mail at Julie.Walsh@oci.state.wi.us in the OCI Legal Unit.

Natural Resources

On June 15, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to the 2006 migratory game bird seasons and waterfowl hunting zones.

Agency Procedure for Promulgation

Public hearings are required and will be held on August 7, 8, 9 and 10, 2006.

Contact Person

Kent Van Horn
Bureau of Wildlife Management
(608) 266-8841

Natural Resources

On June 23, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to construction permit waiver requests from air contaminant sources.

Agency Procedure for Promulgation

Public hearings are required and will be held on August 7 and 8, 2006.

Contact Person

Joe Brehm
Bureau of air Management
(608) 267-7541

Transportation

On June 22, 2006, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 227.14 (4m), Stats.

The proposed rule-making order relates to contractual service procurement.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 8, 2006.

The organizational unit responsible for promulgation of the proposed rule: Division of Transportation System Development, Bureau of State Highway Programs.

Contact Person

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

Transportation

On June 29, 2006, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Trans 102, relating to operator's licenses and identification cards.

Agency Procedure for Promulgation

A public hearing is scheduled for August 3, 2006. The Division of Motor Vehicles, Bureau of Driver Services, is responsible for promulgation of the rule.

Contact Persons

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

University of Wisconsin System

On June 23, 2006, the Board of Regents of the University of Wisconsin System submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule creates ch. UWS 7, and amends ch. UWS 11, relating to dismissal of faculty and academic staff who have engaged in serious criminal misconduct.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and will be held on August 2, 2006 at 9:00 a.m. in Room 1820 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin.

The UW System Office of General Counsel is primarily responsible for preparing this proposed rule.

Contact Person

Christopher Ashley
(608) 262-3662

Rule-making notices

Notice of Hearing

Administration

[CR 06-084]

Notice is hereby given that pursuant to ss. 16.004 (1) and 227.11 (2) (a), interpreting ss. 16.967 (3) and (7), Stats., the Department of Administration will hold a public hearing on a proposed rule order amending ch. Adm 47 relating to the administration of the Wisconsin Land Information Program.

Hearing Information

Date: **August 2, 2006**
 Time: 3:30 P.M.
 Location: WI Dept. of Administration Building
 101 East Wilson Street, Room 4B
 Madison, WI 53702

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, should be directed to: Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, WI 53707-7864. Written comments must be received by August 11, 2006, to be included in the record of rule-making proceedings.

Proposed order of the Department of Administration

The Wisconsin Department of Administration proposes an order to repeal s. Adm 47.02 (2), to renumber s. Adm 47.02(3) through (11) and to amend ss. Adm 47.02 (2), 47.03 (intro.), 47.04 (intro.), (2) and (4), 47.05, 47.06 (intro.) and (2) and 47.07, relating to the administration of the Wisconsin Land Information Program.

Analysis prepared by the Department of Administration

Statutory authority: s. 16.004 (1) and 227.11, Stats.

Statutes interpreted: ss. 16.967 (3) and (7), Stats.

Explanation of agency authority: Pursuant to s. 16.967, Stats., the Wisconsin Department of Administration is responsible for the administration of the Wisconsin Land Information Program.

Related Statute or Rule: None.

Plain language analysis of Proposed Amendments

The department proposes to amend Chapter Adm 47 to reflect the department's role in the land information program's administration and increase eligibility for grants to county land information offices.

Proposed revisions to ss. Adm 47.03, 47.04, 47.05, 47.06 and 47.07, would eliminate reference to the Land Information Board which was eliminated in the 2005-07 state budget and identify the department as the administrator of the land information grant program.

Proposed revisions to s. 47.04 would change the eligibility requirement for base budget funding awards to counties. The proposed amendment to s. Adm 47.02 increases the maximum level of recording fees a county may retain and be eligible for a base budget award to \$50,000 from \$35,000. This change is among the recommendations from the August 2004 Report

to the Legislature by the Wisconsin Land Information Board and Land Information Council that also recommended the sunset of those bodies.

Note: Complaint forms are available from the Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or from the department's website at: <http://drl.wi.gov>.

None.

Comparison of Similar Rules in Adjacent States

The department's Land Information Program is unique to the region, as many adjacent states are in preliminary stages of creating such partnerships with their counties. Despite the lack of structured programs to support the development of land information at a county-wide level, a few states may provide competition-based grants, basic funds for training, or technology licenses. In most instances counties are expected to support and maintain existing land information programs through local funding.

Data Used To Support Rule

The current rule's revisions were codified in 2002. These proposed rule changes reflect changes in state statute that includes the sunset of the Wisconsin Land Information Board. The changes are also based on the August 2004 report to the Governor and Legislature on "An Evaluation of Functions, Activities and Future Directions" prepared by the Land Information Board and Wisconsin Land Council. That consensus document addressed the continuation of the functions of the land information program, now administered by the department, assigned additional duties to the State Cartographer's office at the University of Wisconsin, and recommended increasing eligibility for Base Budget land information awards to county land information offices.

Initial Regulatory Flexibility Analysis

The department does not foresee any significant impact on small business.

Fiscal Estimate

Estimated fiscal effect on state operations: The Department currently administers approximately 18 Base Budget grants. Because systems and procedures are already in place to manage these grants, increasing eligibility for additional counties will have a minimal affect on state operations.

Estimated fiscal effect on local governments: Increasing eligibility for counties to receive base budget grants will allow additional counties to be eligible for these grants. Those funds would provide for capacity building to those counties with fewer resources and assist in the development of a comprehensive and integrated state wide system of geographic information.

Estimated fiscal effect on private entities: None.

Contact Person:

Mike Friis

Department of Administration

(608) 267-7982 (telephone)

michael.friis@wisconsin.gov

Text of Rule:

Section 1. Adm 47.02 (2) is repealed.

Section 2. Adm 47.02(3) through (11) are renumbered Adm 47.02(2) through (10), and Adm 47.02(2), as renumbered, is amended to read:

(2) “County-wide plan for land records modernization” means the plan under s. 59.72 (3) (b), Stats., approved by the board department under s. 16.967 (3) (e), Stats.

Section 3: Adm 47.03 (intro.) is amended to read:

Adm 47.03 Eligible projects and activities. A county may apply to the board department for a grant for any of the following projects:

Section 4. Adm 47.04 (intro.) is amended to read:

Adm 47.04 Grants. Subject to availability of funds, the board department shall determine annual grant amounts for eligible projects under s. Adm 47.03, by October 15, of each year. A grant may not exceed \$100,000. The board department may award more than one grant to a county board as provided by s. 16.967 (7) (b), Stats. Any funds not granted in any given year shall remain available for general distribution to eligible local units of government, at the discretion of the board department in future grant cycles. In carrying out its duties under this section, the department may seek advice and assistance from state agencies, local governmental units, and other experts involved in collecting and managing land information. The board department may provide the following grant categories:

Section 5: Adm 47.04(2) is amended to read:

(2) Land information system base budget grants for eligible projects and activities provided in s. Adm 47.03 (1) through (5), shall be available to provide a minimum funding level to enable a county land information office to develop, maintain and operate a basic land information system. To be eligible for this category, the fees that a county retained under the provisions of s. 59.72 (5) (b), Stats., shall be less than \$35,000 \$50,000 for the preceding fiscal year.

Section 6: Adm 47.04 (4) is amended to read:

(4) Strategic initiative grants for eligible projects and activities as provided in s. Adm 47.03 (1) through (5), for expediting and fostering statewide and regional strategic initiatives consistent with specific statutory requirements and standards adopted by the board department.

Note: The Wisconsin Land Information program statutes and the standards adopted by the Board Department may be obtained from the Department’s Land Information Program Office at 17 South Fairchild Street, P.O. Box 8944, Madison, Wisconsin or at the following website: www.doa.state.wi.us/olis
<http://www.doa.state.wi.us/dir/index.asp>.

Section 7: Adm 47.05 is amended to read:

Adm 47.05 Grant application. All applications shall be submitted on the authority of the county board on behalf of an eligible applicant. Application authority shall be obtained by specific action of the county board. The board department may request evidence of such authority. County boards may delegate their authority to apply for grants to the entity responsible for administration of the county land information office established under s. 59.72 (3), Stats. Any such delegation shall be explicit. All applications shall be fully completed and submitted on forms provided by the department before the deadline established by the board department. Applications shall be executed under the authority of both the county or delegated authority and the eligible applicant. The department shall give notice of application periods to county land information offices at least 90 days prior to the deadline for submission of applications.

Note: Grant Applications can be obtained by calling or writing the Wisconsin Land Information Program, Department of Administration, P. O. Box 1645 8944, Madison, WI 53701-1645 53708-8944 (telephone 608/267-2707 3369). The application may also be viewed and printed at the following website: www.doa.state.wi.us/olis
<http://www.doa.state.wi.us/dir/index.asp>.

Section 8: Adm 47.06(intro.) is amended to read:

Adm 47.06 Evaluation criteria. Grant requests shall be reviewed and evaluated by department staff for board department approval. All grant applications shall be evaluated on the applicant’s responsiveness to the following requirements:

Section 9: Adm 47.06(2) is amended to read:

(2) Projects shall meet or exceed all relevant statutory requirements and standards established by the board department under s. 16.967 (3)

Section 10. Adm 47.07 is amended to read:

Adm 47.07 Grant agreements. Grants are contingent upon the execution of a grant agreement. Failure of a grantee to execute a grant agreement shall result in withdrawal of the offer. The board, the department, and the grantee may negotiate the specific budget items, project goals, and other terms and conditions prior to the board department approving the grant. Terms of a grant award shall be administered through the grant agreement.

Notice of Hearing

Agriculture, Trade and Consumer Protection

[CR 06-085]

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed repeal and recreation of chapter ATCP 156, Wis. Adm. Code, relating to Seed Potato Certification and Grading.

DATCP will hold three public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Thursday, August 31, 2006 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to kevin.leroy@datcp.state.wi.us or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>

Copy of rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain a copy by calling (608) 224-4928 or emailing kevin.leroy@datcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to:

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

Written comments

To provide comments or concerns relating to small business, please contact DATCP’s small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by July 31, 2006, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911,

Madison, WI 53708–8911, telephone (608) 224–4584. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearing Dates and Locations

Monday, August 7, 2006

1:00 p.m. until 3:00 p.m.

Department of Agriculture, Trade and Consumer Protection
Board Room (CR–106)
2811 Agriculture Drive
Madison, Wisconsin, 53718–6777

Wednesday, August 9, 2006

10:00 a.m. until 11:30 a.m.

The Portage County Public Library
Charles M. White Library Building
The Pinery Room
1001 Main Street
Stevens Point, Wisconsin 54481

Wednesday, August 9, 2006

2:30 p.m. until 5:00 p.m.

Langlade County Fair Grounds
Clover Room, Multipurpose Building
1581 Neva Road
Antigo, Wisconsin, 54409–2340

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

This rule repeals and recreates current rules related to Wisconsin’s certified seed potato program, a voluntary program for the certification and grading of seed potatoes in this state. The program is jointly administered by the Wisconsin department of agriculture, trade and consumer protection (“DATCP”) and the university of Wisconsin college of agricultural and life sciences (the “college”). This rule updates and clarifies current certification standards and procedures.

Statutory Authority

Statutory authority: ss. 93.07 (1), 93.09, 100.14 (1) and 100.20 (2), Stats.

Statutes interpreted: ss. 93.06 (1), (1m), (1p), (1q) and (11), 93.09, 100.14 (1) and 100.20, Stats.

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules to implement laws under its jurisdiction. DATCP also has authority, under the above statutes, to adopt grading and certification standards for commodities, to provide grading and certification services upon request, and to recover the cost of the requested services. DATCP has authority, under s. 100.20, Stats., to prohibit unfair and deceptive business practices.

Under s. 93.06 (11), Stats., DATCP may cooperate with other entities and appoint agents for the administration of programs under its jurisdiction. DATCP administers the certified seed potato program pursuant to this rule and a memorandum of understanding with the college.

DATCP has delegated authority to the college to inspect and certify seed potatoes for disease risk. The college may charge fees to cover the college’s costs of inspection and certification. Certification decisions by the college may be subject to administrative review by DATCP, as provided in this rule.

DATCP grades seed potatoes, once they are certified by the college. A person may not sell potatoes as Wisconsin certified

seed potatoes unless the potatoes are certified by the college and graded by DATCP.

Background

Wisconsin is one of the nation’s largest potato producing states. Wisconsin’s certified seed potato program helps Wisconsin’s potato industry, by maintaining the quality and disease–free reliability of seed potatoes. Commercial potato growers can rely on the seed potatoes they purchase. Seed potato growers can market their seed potatoes more effectively, because buyers can purchase with confidence. Certification helps prevent the spread of serious and potentially devastating potato diseases, and facilitates the movement of seed potatoes in interstate and international commerce.

Participation is Voluntary

Seed potato certification and grading is voluntary, and is done at the request of the seed potato grower. Yet most Wisconsin potatoes are grown from certified seed, because certification helps buyers and sellers alike.

At the request of a seed potato grower, the college inspects seed potatoes for diseases and other conditions. The college then certifies the seed potatoes in appropriate categories based on predicted disease–free reliability. DATCP inspects and grades college–certified seed potatoes for other measures of quality. A grower may not sell potatoes as certified seed potatoes unless the potatoes have been certified by the college and graded by DATCP.

Seed potatoes are labeled with their certification and grade classifications, so that buyers know what they are getting. Certification and grade classifications affect purchase decisions and sale prices. DATCP and the college charge fees to cover the cost of requested grading and certification services.

The Certification Process

DATCP rules specify standards and procedures for seed potato certification and grading. Current rules are contained in ch. ATCP 156, Wis. Adm. Code. Historically, the college has provided disease–free propagative material used to grow multi–generational lines of certified seed potatoes in this state.

Seed potato growers plant propagative material provided by the college, and harvest the seed potatoes. Harvested seed potatoes may be sold to commercial growers, or replanted to produce subsequent generations of seed potatoes. If the seed potatoes are certified by the college (and graded by DATCP), they may be sold as *certified seed potatoes* (normally at a higher price). If they are certified as “foundation” seed potatoes, they may be replanted to produce subsequent generations of *certified seed potatoes*.

With each generation of planting in the field, the disease–free reliability of the seed potatoes (and hence their certification classification) is reduced. After a certain number of generations, seed potatoes may no longer be used as “foundation” seed potatoes to produce other certified seed potatoes. However, a seed potato grower may start a new line of certified seed potatoes, using new disease–free propagative material provided by the college or a comparable source.

As part of the certification process, the college samples and inspects growing and harvested seed potatoes. The college also conducts follow–up evaluations of potatoes grown from the certified “lot.” The college looks for diseases of concern. The college may not certify a seed potato “lot” if samples from that “lot” fail to meet minimum disease standards.

If a “lot” meets minimum disease standards, the college assigns a classification code based on generation (with each year of field planting the classification drops one level, reflecting increased disease risk). Each “lot” is labeled with its assigned classification code.

Once the college has certified seed potatoes, and assigned a disease–risk classification, DATCP may grade the potatoes based on various quality factors. DATCP visually inspects samples of potatoes drawn from the graded “lot,” and grades the “lot” according to DATCP rules. Each graded “lot” is labeled with its assigned grade.

Rule Changes Needed

In recent years, there has been increased demand for rapid introduction of new potato varieties, often from out–of–state sources. Biotechnology has expanded disease–testing options, and has facilitated the creation of new potato varieties and new forms of propagative material. There has been increased cooperation between states, aimed at standardizing seed potato certification.

These developments have not replaced the traditional certification program based on college propagative material, field inspection and “limited–generation” plantings. However, they do require some program changes and adaptations.

This rule provides a clearer, more up–to–date framework for the seed potato certification program administered by the college. Among other things, this rule:

- Clarifies and, in some cases, changes current certification standards and procedures.
- Eliminates some outdated requirements, and strengthens some disease–control standards.
- Recognizes new laboratory testing capabilities.
- Expands the number of sources from which growers may obtain propagative material for certified seed potatoes, while minimizing disease risk.
- Allows for variances in certification standards to accommodate unusual situations.
- Clarifies how propagative material is regulated.

This rule does not substantially alter current standards or procedures for DATCP quality inspection of seed potatoes. However, it clarifies the respective roles of DATCP and the college, and spells out grading standards and procedures with greater clarity.

Rule Coverage

This rule applies to seed potato growers who wish to produce and sell *certified seed potatoes* (participation is voluntary, and there is nothing to prohibit sales of uncertified seed potatoes). It also applies to laboratories and greenhouses that provide propagative material used to grow certified seed potatoes. This rule does *not* apply to any of the following:

- Producers who grow potatoes only for consumption, and not for seed.
- Producers who grow potatoes for seed, but do not wish to have their seed potatoes certified and graded (participation is voluntary).
- Home gardens.

Rule Contents

Rule Reorganization

This rule reorganizes current rules into subchapters. This clarifies the distinction between certification by the college and grading by DATCP. This rule also redrafts the current rules, so they will be easier to read and understand.

Certification Procedure

This rule clarifies the procedure by which a seed potato grower may apply for and obtain certification of seed potatoes. Among other things, it clarifies the information that the grower must include on the application form, and the information that the college must include in the certification.

This will make it easier for the college to process certification requests, and document certifications. It will also provide a better certification history and record, which is important for certification credibility, disease control and future certification.

Under this rule, if an applicant seeks certification of a protected (patented) variety of seed potatoes, the application must document that the applicant has permission to grow the protected variety. This is consistent with requirements under federal law.

Under this rule, as under current rules, the college may certify a “lot” of seed potatoes at the request of the seed potato grower. This rule clarifies that a “lot” includes all potatoes of the same variety and line that are grown from the same source seed on the same farm in the same year. Certification does not constitute a warranty by the college, and does not extend to any disease or condition that cannot be observed by visual inspection.

Certification Standards: General

This rule clarifies minimum standards for the certification of seed potatoes, including standards for all of the following:

- Propagative material used to grow the certified seed potatoes.
- Field planting.
- Field and harvest inspections.
- Post–harvest testing.

Propagative Material

This rule expands the number of sources from which growers may obtain propagative material for certified seed potatoes, while minimizing disease risk. Under this rule, certified seed potatoes must be grown from one of the following (no other propagative materials may be planted on a farm producing certified seed potatoes):

- Certified “foundation” seed potatoes produced, on the same farm, by the producer requesting certification.
- Certified “foundation” seed potatoes produced on another farm, if pre–approved by the college.
- Propagative material produced by the college.
- “Foundation” seed potatoes certified by another state, under standards equivalent to the standards in this rule, if pre–approved by the college.
- Propagative material produced in an approved laboratory or greenhouse (see below), if pre–approved by the college.
- Propagative material produced by a recognized breeding program and pre–approved by the college.

Field and Harvest Inspection

Under this rule, as under the current rules, the college must conduct *field and harvest inspections* of certified seed potatoes. The college must visually inspect a representative sample of growing potato plants, and a representative sample of harvested potatoes. The college must inspect for specified diseases and conditions, including leafroll, mosaics, spindle tuber, bacterial ring rot and variety mixture.

Under this rule, as under the current rules, the college must reject an entire “lot” of potatoes for certification if inspection samples exceed specified tolerances for the relevant diseases or conditions. This rule makes the following key changes to current tolerances, to make them more consistent with tolerances in other states:

- It specifies a *zero tolerance* for spindle tuber (which currently has a positive tolerance, but has not been detected for several decades).
- It increases (slightly) the current tolerance for variety mixture.

Field and harvest inspection tolerances, as revised by this rule, are shown in *Table 1*:

**Table 1
Field and Harvest Inspection Standards**

Condition	1 st Field Inspection	Subsequent Field or Harvest Inspections	
		Foundation Seed Potatoes	Other Seed Potatoes
Leafroll	1.5%	0.25%	1.0%
Mosaics	2.0%	0.25%	1.0%
Spindle tuber	0.0%	0.0%	0.0%
Total leafroll and mosaics	3.0%	0.25%	2.0%
Bacterial ring rot	0.0%	0.0%	0.0%
Variety mixture	1.0%	0.1%	0.1%

“Foundation” Seed Potatoes; Supplementary Standards.

This rule, like the current rules, specifies higher standards for the certification of “foundation” seed potatoes (which may be used to grow other *certified* seed potatoes, not just commercial potatoes or uncertified seed potatoes). “Foundation” seed potatoes are subject to more rigorous disease tolerances (see *Table 1* above and *Table 2* below), and more rigorous inspection and control for bacterial ring rot (see below). The college may not certify “foundation” seed potatoes until it has completed its post–harvest testing of the potatoes (see below).

Bacterial Ring Rot.

The current rules and this rule specify a *zero tolerance* for bacterial ring rot. Under the current rules and this rule, the college must reject for certification any “lot” of seed potatoes in which bacterial ring rot is found. The college may certify other lots on the same farm, but not as “foundation” class seed. The farm must produce 2 annual crops free of bacterial ring rot before the college can again certify “foundation” class seed from that farm. There is no exception to this requirement.

Under current rules, if bacterial ring rot is found in 2 “lots” from the same farm within 3 years, the college may not certify any other “lots” from that farm (regardless of whether bacterial ring rot is actually found in those “lots”). This rule allows the college to certify the other “lots,” but not as “foundation” seed (until the farm produces 2 annual crops free of bacterial ring rot).

Post–Harvest Test.

Under current rules and this rule, the college must conduct a *post–harvest test* on every “lot” of certified seed potatoes. The college may not certify a “lot” that fails a post–harvest test, except that in some cases this rule allows certification based on lab testing (see below).

To conduct a post–harvest test, the college collects a sample of potatoes from the “lot” to be certified, and plants those potatoes in a winter growing location. The college then inspects the potatoes grown in the winter location for disease and variety mixture. The inspection must show compliance with specified tolerances (this rule revises some of the current tolerances). The tolerances (as revised by this rule) are shown in *Table 2*:

**Table 2
Post–Harvest Test Standards**

Condition	Foundation seed potatoes	Other certified seed potatoes
Leafroll	0.5%	5.0%

Mosaics	0.5%	5.0%
Spindle tuber	0.0%	0.0%
Total leafroll and mosaics	0.5%	5.0%
Bacterial ring rot	0.0%	0.0%
Variety mixture	0.25%	2.0%

This rule allows for greater use of laboratory testing in lieu of traditional post–harvest testing. Under this rule, the college may certify a “lot” of seed potatoes that passes field and harvest inspection, regardless of any post–harvest testing, if laboratory testing by the college shows that the “lot” meets the post–harvest test standards in *Table 2*.

Variance Allowed by the College

Under this rule, the college may certify a “lot” of seed potatoes that fails to comply with applicable tolerances in *Table 1* or *Table 2*, if the college documents all of the following:

- Special conditions justify the certification, and there is a reasonable likelihood that the next generation of seed potatoes grown from the non–complying lot will meet applicable tolerances.
- No bacterial ring rot has been found in the lot.
- The certification will not jeopardize seed potato quality, or pose a significant risk of harm to the potato industry or consumers.
- The certified seed potatoes will not be planted on any farm other than the farm where they are produced.

Classifying Certified Seed Potatoes

Under current rules and this rule, the college gives each “lot” of certified seed potatoes a classification number based on generation (with each year of field planting the classification drops one level, reflecting increased disease risk). Under current rules, seed potatoes may be certified for 5 generations (4 generations as “foundation” seed), except that “Elite” seed potatoes produced by the college may be certified for up to 7 generations (6 generations as “foundation” seed).

This rule allows certification for up to 7 generations (6 generations as “foundation” seed), and eliminates the separate classification of “Elite” seed. This will make Wisconsin’s classification system more consistent with the system in other states. The new classification system is shown below (FY1 is the highest classification):

Under this rule, the college may authorize a seed potato grower to use experimental propagative material from a breeding farm. This makes it possible for growers to experiment with new varieties. However, seed potatoes grown from the experimental material may be certified for only 3 generations (“Ex5 Foundation,” “Ex6 Foundation” and “Certified”), not 7 generations.

**Table 3
Classification**

Year of Field Propagation on Seed Potato Farm (Generation)	Standard Classification	Experimental* Classification
1	FY1 Foundation	Ex5 Foundation
2	FY2 Foundation	Ex6 Foundation
3	FY3 Foundation	Certified**
4	FY4 Foundation	
5	FY5 Foundation	

6	FY6 Foundation	
7	Certified**	

* Applies to lines of seed potatoes grown from experimental field-grown propagative material from recognized breeding programs.

** "Certified" (non-foundation) class seed may not be replanted to produce other certified seed potatoes, but may be used to produce commercial potatoes or uncertified seed potatoes.

Under this rule, "foundation" seed potatoes certified by another state have the same classification assigned by that state, provided that the other state certifies seed potatoes under standards equivalent to the standards in this rule. If the other state does not provide field year information, the seed will be classified as FY5.

Once for each line of certified seed potatoes, the college may renew a classification by doing one of the following (contrary to the normal classification progression):

- The college may classify, as "FY5" rather than "certified," certified seed potatoes produced from seed potatoes classified as "FY6."
- The college may classify, as "Ex5" rather than "certified," certified seed potatoes produced from seed potatoes classified as "Ex6."

A seed potato grower seeking such a renewal must show that the seed potatoes meet the standards for the renewed classification. The college may require verification in the form of laboratory testing. "Tuber unit planting" is no longer required, in order to qualify for a renewal classification, because most seed potato growers no longer have the necessary equipment.

Approved Laboratories and Greenhouses

Historically, the college has provided disease-free propagative material used to grow lines of certified seed potatoes in this state. But in recent years, there has been increased demand for new potato varieties, often from out-of-state sources.

This rule expands the sources from which a seed potato grower may obtain propagative material used to start a line of certified seed potatoes. However, this rule includes safeguards to prevent the introduction of disease, and to maintain the credibility of the certification process.

This rule allows a seed potato grower to obtain propagative material from, among other places, a laboratory or greenhouse approved by the college. "Propagative material" may include tissue culture plantlets, microtubers, minitubers or tubers that are produced under rigorous laboratory or greenhouse conditions to ensure that they are free of disease.

The college may approve a laboratory or greenhouse in this state if all of the following apply:

- The college inspects the laboratory or greenhouse before granting approval, and at least annually after granting approval. The college must also inspect minitubers, if any, produced by a greenhouse.
- The laboratory or greenhouse uses testing, propagation, isolation and sanitation procedures equivalent to those used by the college.
- The laboratory or greenhouse operator does all of the following:
 - Applies to the college for approval, and provides information reasonably required by the college for purposes of evaluation and approval.
 - Agrees to pay the college's reasonable costs to inspect, evaluate and approve the laboratory or greenhouse.

- Keeps complete records of laboratory or greenhouse operations, and of propagative material produced by the laboratory or greenhouse. The operator must make the records available to the college upon request.
- Labels propagative material as directed by the college, consistent with this rule.

The college may approve a laboratory or greenhouse in another state if the seed potato certification agency in the other state approves that laboratory or greenhouse for the same purpose, using standards and procedures that are equivalent to the standards and procedures that the college uses to approve in-state laboratories and greenhouses under this rule.

Storing, Shipping and Handling Certified Seed Potatoes

This rule spells out basic standards for storing, shipping and handling certified seed potatoes, to prevent disease contamination. This rule modernizes current standards. For example, this rule eliminates the current requirement that "foundation" seed potatoes be shipped in bags (it allows bulk shipments) and addresses shipment in totes. This rule also eliminates the current requirement that bags or trucks be sealed with a metal seal.

Misrepresentation

Under this rule, no person may do any of the following:

- Sell or represent potatoes as certified seed potatoes unless they are certified, graded and labeled under this rule, or by another state under standards equivalent to those in this rule.
- Sell or represent potatoes as Wisconsin certified seed potatoes unless they are certified by the college and graded by DATCP under this rule.
- Misrepresent the terms, conditions or basis for any seed potato certification.

The college may withdraw certification if a seed potato seller misrepresents the terms of the certification. DATCP may also prosecute fraudulent misrepresentations in court. Buyers who suffer monetary loss because of fraudulent misrepresentations have a private remedy for double damages, court costs and attorney fees.

Review of College Actions

Current rules provide no mechanism by which a seed potato grower may seek review of an adverse certification decision by the college. Under this rule, a seed potato grower may request an informal meeting with the college to review an adverse decision. The college must hold the informal meeting within 30 days, unless the requester agrees to a later date. The meeting may be held by telephone.

If the matter is not resolved after the informal meeting with the college, the seed potato grower may request a contested case hearing before DATCP. DATCP may reverse, modify or remand a decision of the college if DATCP finds that the decision is contrary to this rule. However, DATCP may not reverse, modify or remand a matter that this rule leaves to the discretion of the college.

Seed Potato Grading by DATCP

This rule clarifies, but does not substantially alter, the standards for DATCP grading of seed potatoes certified by the college. This rule prohibits misrepresentations of grade. This rule describes the current mechanism by which a person adversely affected by a DATCP grading decision may request a contested case hearing.

Fiscal Estimate

This rule will not have a significant fiscal impact on DATCP or the college. This rule will not affect local units of government. A complete fiscal estimate is attached.

Business Impact

This rule applies to seed potato growers who wish to produce and sell *certified* seed potatoes (participation is voluntary, and there is nothing to prohibit sales of uncertified seed potatoes). It also applies to laboratories and greenhouses that provide propagative material used to grow certified seed potatoes. Many of these businesses may qualify as “small businesses.”

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

- Producers who grow potatoes only for consumption, and not for seed.
- Producers who grow potatoes for seed, but do not wish to have their seed potatoes certified and graded (participation is voluntary).
- Home gardens.

This rule will assist the Wisconsin potato industry, including seed potato growers. This rule is not expected to have any significant adverse impact on seed potato growers or other sectors of the Wisconsin potato industry. Participation is voluntary.

This rule modernizes Wisconsin’s certified seed potato rule to address changing industry practices and standards. Among other things, this rule:

- Clarifies current certification standards and procedures.
- Allows seed potato growers to obtain propagative material from a wider array of sources. This will help satisfy emerging demands for rapid introduction of new potato varieties, often from out-of-state sources. This rule includes safeguards to ensure that seed potatoes from these sources are not diseased. Laboratories and greenhouses producing propagative material must be approved by the college, and the college must pre-approve propagative material before growers in this state plant the propagative material to produce certified seed potatoes.
- Provides for more targeted response to findings of bacterial ring rot. This rule provides continued strong protection against bacterial ring rot, but reduces the threat of devastating business losses to seed potato growers.
- Updates current disease tolerances, to reflect current interstate and international standards. The college may also grant written variances for individual lots if special conditions justify the variance, and if the college finds that the variance does not create a risk of harm to other potato producers, to the potato industry, or to consumers.
- Provides for certification reciprocity between states. Seed potatoes certified in another state may be sold as certified seed potatoes in Wisconsin, provided that the other state reciprocates, and provided that the other state applies certification standards and procedures that are equivalent to those applied in Wisconsin. Seed potatoes certified in another state may not be represented as Wisconsin certified seed potatoes, and must be labeled to show certification in another state.
- Modernizes requirements for certified seed potato labeling, shipping and handling.
- Provides a mechanism by which a seed potato grower may obtain informal and formal review of an adverse certification decision by the college.
- Prohibits fraudulent sales of uncertified seed as certified seed.

This rule makes minor changes related to certification application, certification procedure, recordkeeping, and certified seed potato handling and labeling. However, none of these changes will have a significant adverse impact on potato growers.

Because this rule has no significant adverse impact on small business, it is not subject to the delayed small business effective date provided in s. ATCP 227.22(2)(e), Stats. DATCP has not incorporated a small business enforcement policy in this rule, pursuant to 2003 Wis. Act 145, because participation in the seed potato certification program is voluntary. DATCP has proposed a separate rule related to the exercise of enforcement discretion under all of its rules.

Environmental Impact

This rule will have no significant environmental impact, compared to current rules. This rule, like the current rules, will help to prevent the introduction and spread of serious potato diseases in this state. No environmental impact statement is required.

Federal Programs

There are no comparable federal programs related to the certification of seed potatoes. The United States department of agriculture, animal and plant health inspection service, is currently developing a proposed memorandum of understanding with states to standardize seed potato certification between states, and to ensure that certification meets minimum standards. This rule is consistent with the proposed memorandum of understanding.

Surrounding State Programs

Michigan. Michigan recently changed its seed potato certification rules. The changes make the Michigan rules more consistent with Wisconsin rules. Conversely, this rule will also make Wisconsin rules more consistent with Michigan rules. For example:

- Michigan’s rule allows variances from certification standards for good cause (such as a statewide shortage of certified seed potatoes). This rule will allow the college to grant similar variances.
- Michigan’s rule has a zero tolerance for potato spindle tuber. This rule also specifies a zero tolerance for spindle tuber.
- Michigan’s rule does not require certified “foundation” seed to be shipped in bags (it allows bulk shipments). This rule also allows bulk shipments, and eliminates the current bagging requirement in Wisconsin.

Minnesota. Minnesota’s seed potato certification rule is similar to Wisconsin’s. But unlike Wisconsin, Minnesota also restricts the planting of uncertified seed potatoes. The Minnesota rules prohibit a person from planting more than 10 acres of uncertified seed potatoes unless those seed potatoes have passed a field inspection. The field inspection must show compliance with disease standards similar to those that apply to certified seed potatoes (among other things, the potatoes must be free of ring rot).

This rule will make Wisconsin rules more consistent, in certain areas, with Minnesota rules. For example:

- Minnesota’s rule allows variances from certification standards for good cause (such as a statewide shortage of certified seed potatoes). This rule will allow the college to grant similar variances.
- Minnesota’s rule has a zero tolerance for potato spindle tuber. This rule also specifies a zero tolerance for spindle tuber.
- Minnesota’s rule does not require certified “foundation” seed to be shipped in bags (it allows bulk shipments). This rule also allows bulk shipments, and eliminates the current bagging requirement in Wisconsin.
- Minnesota’s rule provides for a more targeted response to bacterial ring rot findings. This rule adopts a similar approach in Wisconsin.
- Minnesota’s rule allows growers to apply for certification of protected varieties, if they have permission to grow those

varieties (the rule does not otherwise regulate the planting of protected varieties). This rule takes a similar approach.

Indiana, Illinois & Iowa. Indiana, Illinois and Iowa do not produce seed potatoes and do not have seed potato certification rules.

DATCP and UW Contacts

Questions and comments related to this rule may be directed to the following persons:

Comments for the Hearing Record:

Department of Agriculture, Trade and Consumer Protection

P. O. Box 8911, Madison, WI 53708–8911

Attn: Kevin LeRoy

Telephone: (608) 224–4928

E–mail: Kevin.Leroy@datcp.state.wi.us

Other Questions or Comments:

Department of Plant Pathology
University of Wisconsin–Madison
1630 Linden Dr.

Madison, WI 53706

Attn: Dr. Amy Charkowski, Assistant Professor
(Administrative Director)

Telephone: (608) 262–7911

E–mail: [Amy Charkowski \[amc@plantpath.wisc.edu\]](mailto:Amc@plantpath.wisc.edu)

Notice of Hearing

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

[CR 06–057]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 443.06, Stats., the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors will hold a public hearing at the time and place indicated below to consider an order to repeal s. A–E 6.03 (1) (a) 1. i. and 2.d.; to amend ss. A–E 6.03 (1) (a) 1. a., b., c. and g., (2) (a) 2. e., and 6.04 (1) (b) and (2) (b); and to create s. A–E 6.03 (1) (b) 6. and 7., relating to land surveyor education and experience requirements.

Hearing Date, Time and Location

Date: **August 3, 2006**

Time: 9:45 a.m.

Location: 1400 East Washington Avenue
Room 121C
(Enter at 55 N. Dickinson Street)
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 August 3, 2006 to be included in the record of rule–making proceedings.

Analysis

Statute interpreted: Section 443.06, Stats.

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

The Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, under the authority of s. 443.06, Stats, may establish the requirements for registration as a land surveyor.

Related statute or rule

There are no other statutes or rules other than those listed above.

Plain language analysis:

The proposed revision to s. A–E 6.03 changes the current rules to recognize and incorporate developments in the land surveyor profession, including new experience options in the field of surveying. The proposed revision of s. A–E 6.03 modifies the experience requirement to include the preparation of transportation project plats and condominium plats. The revisions also clarify the type of other experience that would be allowed to satisfy the requirements for licensure.

The proposed revisions to s. A–E 6.04 reflect changes in the land surveying curriculum as a result of advances in surveying technology. The revisions specifically recognize that such courses satisfy the educational requirements for registration as a land surveyor in Wisconsin.

SECTION 1 adds the language “interpreting legal descriptions, deeds and survey maps” to the qualifying work experience requirement in s. A–E 6.03 (1) (a) 1. a. SECTION 1 also eliminates the term “relocate” because it is redundant and the actual surveying function is the “location” of lost corners. And SECTION 1 adds language describing the type of land survey system corners (USPLS) involved in location surveys.

SECTION 2 is being revised to eliminate the writing and interpreting land descriptions provision because it was added to s. A–E 6.01 (1) (a) 1. a. The provision also eliminates the preparation of certain types of maps as qualifying experience due to changes in the field of surveying.

SECTION 3 modifies the existing language to specify the type of official plats and maps which satisfy the qualifying experience in s. A–E 6.03 (1) (a) 2. e.

SECTION 4 creates two additional types of work experience which satisfy the one–third experience requirement in s. A–E 6.03 (1) (b).

SECTION 5 is being revised to add additional acceptable courses due to changes in the land surveying curriculum. SECTION 5 also adds a specific minimum number of credits, 16, out of a total number of 24 semester credits required in principles of land surveying and technical aspects of land surveying for applicants with a bachelor’s degree in civil engineering. The change also allows applicants with civil engineering degrees to receive a specified number of semester credits, 8, in other survey–related courses.

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

There is no existing or proposed federal regulation.

Summary of factual data and analytical methodologies

No study resulting in the collection of factual data was used relating to this rule. The primary methodology for revising the rule is the board’s analysis and determination that a rule change is necessary.

Analysis on small business or in preparation of economic impact report

The proposed rule would change the education and experience requirements for registration as a land surveyor in Wisconsin. There are 1579 active land surveyors licensed in Wisconsin. Of the active 1579 land surveyor licensees in Wisconsin, a significant percentage of them probably work in small businesses.

In order for a land surveyor to obtain their license, the applicant must demonstrate that they are qualified to become a land surveyor. These registration requirements can be met in several different ways, which include a certain amount of education and experience requirements.

These registration requirements would be changed as it relates to education and experience requirements. The experience requirements in the proposed rule would clarify existing rules and allow for the experience requirements to be met by working on Transportation Project Plats and Condominium Plats. This rule would merely clarify and add areas in which experience credit can be given as well as expand the types of courses that will be allowed to satisfy the educational requirements and reallocate the number of credits that can be taken in certain educational areas. The total amount of education and experience required for registration will not be changed.

There will be no additional reporting requirements, bookkeeping requirements, or compliance costs. This rule will not have an effect on small business.

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 and the Division of Board Services. The total staff salary and fringe is estimated at \$2,100.

Effect on small business

These proposed rules will have no significant economic impact on a 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.

Written comments

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

Text of Rule

SECTION 1. A-E 6.03 (1) (a) 1. a., b., c. and g. are amended to read:

A-E 6.03 (1) (a) 1. a. Researching public and private records and interpreting legal descriptions, deeds, and survey maps.

b. ~~Relocating~~ Locating lost and obliterated corners and United States public land survey system corners and reestablishing or perpetuating monuments of the corners.

c. Establishing, reestablishing ~~or~~ and perpetuating survey monuments.

g. Preparing descriptions of real property from data acquired by field measurements and other evidence of property location.

SECTION 2. A-E 6.03 (1) (a) 1. i. and 2. d. are repealed.

SECTION 3. A-E 6.03 (1) (a) 2. e. is amended to read:

A-E 6.03 (1) (a) 2. e. Official plats or maps of land in this state in accordance with the Wisconsin administrative code.

SECTION 4. A-E 6.03 (1) (b) 6. and 7. are created to read:

A-E 6.03 (1) (b) 6. Transportation project plats in accordance with Wisconsin statutes or local ordinances.

7. Condominium plats prepared in accordance with Wisconsin statutes or ordinances.

SECTION 5. A-E 6.04 (1) (b) and (2) (b) are amended to read:

A-E 6.04 (1) (b) No more than 4 credits may be in courses related to land surveying such as "~~Engineering Surveying~~," "~~Municipal Surveying~~," "~~Route Surveying~~," "~~Highway Surveying~~," "~~Topographic Surveying~~," "~~Geodetic Surveying~~," "~~Photogrammetry~~," "~~Cartography~~," "~~Construction Surveying~~," "~~Air Photo Interpretation~~" and "~~Artillery Surveying~~." "engineering surveying," "municipal surveying," "route surveying," "highway surveying," "topographic surveying," "geodetic surveying," "photogrammetry," "cartography," "construction surveying," "air photo interpretation," "artillery surveying," "geographic information systems," "land information systems" and "remote sensing systems."

(2) (b) Received a bachelor's degree in civil engineering of not less than 4 years duration from a college or university accredited by a regional accrediting agency approved by the state where the college or university is located. The curriculum shall include no less than 16 of 24 semester credits in courses concentrating on the legal principles of land surveying and the technical aspects of land surveying. These courses shall include areas of study such as research of public and private records, principles of evidence and the interpretation of written documents used in boundary determination, the study of the legal elements of land surveying including those involving resurveys, boundary disputes, defective descriptions, riparian rights and adverse possession, the study of the professional and judicial functions of a land surveyor, the study of surveying methods for measuring distance and angular values, note keeping, computation and writing descriptions and the study of the Wisconsin statutes and local ordinances relating to the preparation of subdivision maps and plats, other land divisions and real property creation. The applicant may be allowed to receive up to 8 credits in certain other courses relating to surveying. These courses may include "engineering surveying," "municipal surveying," "route surveying," "highway surveying," "topographic surveying," "geodetic surveying," "photogrammetry," "cartography," "construction surveying," "air photo interpretation," "artillery surveying," "geographic information systems," "land information systems" and "remote sensing systems."

Notice of Hearing

Commerce

(Financial Resources for Businesses and Communities)

NOTICE IS HEREBY GIVEN that pursuant to section 560.125 (5m) of the Statutes, the Department of Commerce will hold a public hearing on emergency rules in chapter Comm 131 relating to diesel truck idling reduction grants.

The public hearing will be held as follows:

Date and Time:	Location:
July 25, 2006	Thompson Commerce Center
Tuesday	Third Floor, Room 3B
At 1:00 P.M.	201 West Washington Avenue
	Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the emergency rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until July 31, 2006, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E–mail comments should be sent to srockweiler@commerce.state.wi.us. If e–mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis prepared by Dept. of Commerce

1. Statutes Interpreted: Section 560.125
2. Statutory Authority: Section 560.125 (4) (f) and (5m)

Section 560.125 (5m) of the Statutes, as created by 2005 Wisconsin Act 25, requires the Department to promulgate rules for administering a diesel truck idling reduction grant program under section 560.125 of the Statutes. Section 560.125 (4) (f) of the Statutes authorizes the Department to impose conditions on the receipt of grants issued in this program.

The rules specify who is eligible for receiving a grant in this program for purchasing and installing diesel truck idling reduction equipment. Eligible costs are also specified, along with how to apply for the grants. Parameters for awarding the grants are likewise specified. These parameters include (1) disallowing grants to any applicant who is failing to comply with any conditions imposed on any previous grant received in this program; and (2) alerting applicants that the Department may (a) refuse to award grants for idling reduction equipment on truck tractors that do not have a sleeper berth, (b) annually allocate up to 25 percent of the grant funding to applicants who own and operate 50 or fewer truck tractors, and (c) set deadlines for submitting applications, and then prorate the awards to the applicants if the total funding requested in the applications exceeds the available revenue.

Related statute

Chapter Comm 48 regulates petroleum products, including diesel fuels, in Wisconsin.

Comparison with federal regulations

Various federal regulations address efforts to decrease emissions of air contaminants or to decrease the use of energy, by motor vehicles.

Particularly pertinent to the rules is a regulation published by the U.S. Environmental Protection Agency (EPA) in the January 18, 2001, *Federal Register*, under Title 40, Parts 69, 80, and 86, in the *Code of Federal Regulations*. Through this regulation, the EPA has established a comprehensive national control program for reducing particulate matter and nitrogen–oxide emissions from heavy–duty diesel engines by 90 percent and 95 percent below current standard levels, respectively. This national program includes stringent, new emission standards that will begin to take effect in model year 2007, and a corresponding significant reduction of the level of sulfur in diesel fuels, which is needed to enable engine components to consistently meet the emission standards.

Extensive federal efforts related to this national program are also underway for reducing these emissions *by reducing diesel engine idling* – such as (1) the EPA’s National Clean Diesel Campaign, which is aggressively promoting diesel idling reduction nationwide; (2) the National Transportation Idle–Free Corridors project, as sponsored by the EPA’s SmartWay™ Transport Partnership, which aims to eliminate all unnecessary long–duration diesel truck and locomotive idling at strategic points along major transportation corridors; (3) the Clean Cities Program in the U.S. Department of Energy (DOE), which includes addressing research and development for diesel idling reduction technologies, and corresponding funding of national and state–level demonstration projects; (4) the *National Idling Reduction Network News*, as published monthly by the DOE’s Argonne National Laboratory, which summarizes current events and developments nationwide relating to diesel idling reduction; and (5) the Congestion Mitigation and Air Quality Improvement Program in the U.S. Department of Transportation’s Federal Highway Administration, which funds retrofitting of heavy–duty diesel engines that results in reducing nitrogen–oxide emissions in air–quality related, nonattainment or maintenance areas. In addition, Sections 792 and 793 of the federal Energy Policy Act of 2005 authorize the EPA to provide \$200 million per year, for fiscal years 2007–2011, for grants and loans to states and other eligible entities to achieve significant reductions in diesel emissions, and those funds can be used in programs that use verified technology to reduce long–duration idling of medium– and heavy–duty diesel trucks.

Comparison with adjacent states

In reviewing available sources, such as the *National Idling Reduction Network News*, and the *Compendium of Idling Regulations* by the American Transportation Research Institute, and in discussing corresponding efforts with staff in Minnesota and the EPA, Department staff did not find any rules in adjacent states that address grants for purchasing and installing diesel truck idling reduction equipment. However, under corresponding statutory criteria, Minnesota began providing loans in 2005 that can be used for this purpose, through its Small Business Environmental Improvement Loan Program. Related efforts in Iowa, Illinois and Michigan include (1) sponsoring of workshops in March 2006 in Michigan, and in May 2006 in Illinois, in conjunction with the EPA’s Midwest Clean Diesel Initiative; and (2) proposed legislation that was passed overwhelmingly by the Illinois legislature in March 2006, which would prohibit diesel vehicles in excess of 8000 pounds from idling more than 5

minutes within any 60-minute period, except for various exemptions.

Summary of factual data and analytical methodologies

The data and methodology for developing these rules consisted of (1) incorporating the detailed, prescriptive criteria in section 560.125 of the Statutes; (2) soliciting and utilizing input from representatives of the stakeholders who are expected to participate in this program; (3) discussing similar efforts to reduce diesel truck idling, with corresponding staff in Minnesota, Pennsylvania, and the EPA; and (4) reviewing Internet-based sources of related federal, state, and private-sector information.

Analysis for making determination of effect on small business or in preparation of economic impact report

The Department considered the potential for owners of large truck fleets to quickly exhaust the available grant funds, as based on the number of trucks in each of the 10 largest fleets in Wisconsin. The Department therefore plans to annually allocate up to 25 percent of the grant funding to applicants who own and operate 50 or fewer truck tractors, in order to field-test the effectiveness of the program and the idling reduction equipment across the complete spectrum of the trucking industry in Wisconsin.

Effect on small business

The rules are not expected to impose any significant costs on small businesses, because the rules only address how the Department will award grant funds for diesel truck idling reduction equipment.

Agency contact

Tom Coogan, Wisconsin Department of Commerce, Bureau of Entrepreneurship, P.O. Box 7970, Madison, WI, 53707-7970, telephone: (608) 267-9214. E-Mail: Thomas.Coogan@wisconsin.gov

Copies of rule

The emergency rules and an analysis of the rules are available on the Internet at the Department of Commerce Web site, through the links there for the Diesel Truck Idling Reduction Program. Paper copies may be obtained without cost from Tom Coogan at the Department of Commerce, Bureau of Entrepreneurship, P.O. Box 7970, Madison, WI 53707-7970, or at Thomas.Coogan@Wisconsin.gov, or at telephone (608) 267-9214 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Initial Regulatory Flexibility Analysis

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

Owners and operators of small fleets of diesel trucks who choose to apply for the grant funds, and vendors who sell or install the idling reduction equipment addressed by the grant funds.

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

Each grant recipient must submit a report describing the operation and performance of the idling reduction equipment funded by the grant.

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

No new professional skills will be necessary for compliance with the rules.

4. Rules have a significant economic impact on small businesses. No.

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

Fiscal Estimate

The above appropriation, as created by 2005 Wis. Act 25, will result in a temporary shortfall to the Department, which likely will be absorbed within the agency's budget.

The proposed rules are not expected to impose any significant costs on the private sector, because the rules only address how the Department will award grant funds for diesel truck idling reduction equipment.

Notice of Hearing Health and Family Services (Community Services, Chs. HFS 30—) [CR 06-081]

NOTICE IS HEREBY GIVEN that pursuant to ss. 48.981 (8) (d), Stats., and s. 227.11(2), Stats., and interpreting s. 48.981 (8) (d), Stats., to create ch. HFS 43, relating to the standards for training required for staff and supervisors involved in the access, initial assessment, and ongoing services delivered to children and families in child abuse and neglect cases, and affecting small businesses.

Hearing Date(s) and Location(s)

Tuesday, August 1, 2006

10:00 a.m. to 2:00 p.m.

Southern Child Welfare Partnership Training Center
455 Science Drive, Suite 110
Madison, WI 53711

DHFS Regional Office, 1853 North Stevens
Rhineland, WI 54501 – Video conferencing

University of Wisconsin-Green Bay
MAC137
2420 Nicolet Drive
Green Bay, WI 54311-7001 – Video conferencing

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

Place Where Written Comments May be Submitted

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>.

Deadline for Comment Submission

The deadline for submitting comments to the Department is 4:30 p.m. on August 8, 2006.

Analysis Prepared by the Department of Health and Family Services

The Department proposes to create ch. HFS 43 to address training requirements for child protective caseworkers and supervisors involved in the access, initial assessment, and ongoing services delivered to children and families in child abuse and neglect cases.

The Department proposes to establish statewide minimum standards for pre–service training, foundation training, ongoing training, and supervisory training of child protective services staff. This training will include recognizing and responding to domestic violence. In addition proposed ch. HFS 43 creates a monitoring process that allows the Department to review and approve training plans submitted by affected agencies and monitor compliance by individual staff. The proposed rule will apply to the Department’s Bureau of Milwaukee Child Welfare (BMCW), county human or social service departments that provide child protective services, and private child welfare agencies licensed under s. 48.60, Stats., and ch. HFS 54 which contract with the Department or county human or social services departments to provide child protective services.

The proposed creation of ch. HFS 43 will not have an affect on the Memorandum of Understanding between the Department and the Department of Corrections that allows the intake training required under s. 48.06 (1), Stats., for intake caseworkers to be provided by the Department of Corrections and the Wisconsin Juvenile Court Intake Association under Ch. DOC 399.

Effect on Small Business (Initial Regulatory Flexibility Analysis)

Section 48.981 (8) (d) 2., Stats., requires the Department to make training programs available for child protective services caseworkers and supervisors to complete training in child abuse and neglect protective services, unborn child abuse protective services, and on recognizing and appropriately responding to domestic abuse. Section 48.981 (8) (d) 2., Stats., further requires that the Department promulgate rules to monitor compliance with the training requirement. To implement the requirements under s. 48.981 (8) (d) 2., Stats., and to promote statewide consistency, the Department proposes rule requirements for pre–service, foundation, and in–service training for those individuals required under s. 48.981 (8) (d) 1., Stats.

Pre–service training is a web–based curriculum developed by the Training Partnerships that may be delivered by an alternative method. Pre–service training is required for child protective services caseworkers and, in certain circumstances, supervisors who begin employment after the effective date of the proposed rule. Foundation training is a curriculum approved by the Department and identified as essential skills and applications training for child protective services caseworkers and supervisors. It is required to be completed within two years after employment as a child protective services caseworker. In–service training consists of continuing education in child welfare and is taken after the completion of pre–service training. This training requirement is ongoing during the term of employment of child protective services caseworkers and supervisors.

Except in Milwaukee County, child protective services are the legislated responsibility of county human services or social services departments (county department). In Milwaukee County, child protective services are the responsibility of the Department. The proposed rule will apply to child protective services staff of the Department and county human services or social services departments and to child welfare agencies that contract with the Department or

county department to provide child protective services. Child placing agencies that are not under contract with the Department or a county department do not provide child protective services. Currently, there are 56 licensed child welfare agencies in Wisconsin. To date, the proposed rules will affect only the 2 agencies that are under currently under contract with the Department to provide child protective services. There are no child placing agencies under contract with a county department to perform child protective services.

In the event that child placing agencies meeting the definition of small businesses under s. 227.114 (1), Stats., contract with either the Department or a county department, the child placing agency will incur training costs for staff who perform child protective services. The costs incurred are a result of the agencies’ and staff responsibilities to comply with s. 48.891 (8) (d) 1., Stats., not the proposed rules. The only cost to the agency is for staff time to participate in training. Agencies are not required to develop or conduct training under the proposed rules or s. 48.981 (d) 1., Stats.; however, under the proposed rule, agencies have that option as it is related to pre–service training; otherwise pre–service training is available as web–based training. If an agency decides to conduct its own pre–service training, the costs will extend beyond opportunity costs to possibly include facility rental, trainer fees, and training materials.

Pursuant to the forgoing analysis, the proposed rule will affect any licensed child placing agency that is under contract with the Department or a county department, including those that are small businesses, to provide child protective services. However, the proposed rule will not have a significant economic impact on any of those businesses. In addition, the Department does not believe that the proposed rules will increase costs implicitly imposed under s. 48.981(8) (d) 1., Stats.

Small Business Regulatory Coordinator
Rosie Greer
Greerrj@dhfs.state.wi.us
608–266–1279

Fiscal Estimate

Proposed rule HFS 43 was developed with significant involvement of the Department, the Child Welfare Training Partnerships, county human services and social services departments, and private agencies. Child protective services agencies are required under s. 48.981(8)(d), Stat., to provide training, which is approved by the Department, on the investigation and treatment of child abuse and neglect. Most agencies currently provide and pay for that training. The Department, under s. 48.981(8)(d), Stat., is required to develop rules to monitor compliance with the training requirement.

The costs arising from proposed HFS 43 for monitoring compliance with the statutory requirement for training may be minimal, and can be absorbed by the affected agencies. The Department believes that the information which agencies will be required to enter into e–WiSACWIS or into personal or other records and make available to the Department for monitoring will require minimal time or effort.

Obtaining Copies of Rules and Fiscal Estimate

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

Contact Person

Christopher Sieck
Statewide Training Coordinator

Division of Children and Family Services
DHFS/DCFS
P.O. Box 8916
Madison, WI 53708-8916
crsieck@wisc.edu

Notice of Hearing
Health and Family Services
(Community Services, Chs. HFS 30 —
Medical Assistance, Chs. HFS 100—)
[CR 06-080]

NOTICE IS HEREBY GIVEN that pursuant to Sections 49.45 (10), 51.03 (4) (f), (g), and (h) and (5), 51.04, 51.42 (7) (a) and (b), and 227.11 (2) (a), Stats., and interpreting 49.45 (10), 51.04, 51.03 (4) (f), (g), and (h) and (5), 51.42 (7) (a) and (b), and 632.89, (2) Stats., Stats., to repeal HFS 105.22 (1) (d) ; to amend HFS 105.22 (1) (c), 105.22 (2) (title), (a) and (b), and (3), 107.13 (2) (a) (intro.) and 1. (intro.), 107.13 (2) (a) 3. a. and b, 4. a. to f., 6., 7. , (b) 1., 4. a. to d., (c) 4. and 6., and (d) 2.; and to create ch. HFS 35, 105.22 (1) (bm), 107.13 (2) (a) 1. a. to g. and (2m) rules relating to outpatient mental health clinics and affecting small businesses.

Hearing Date(s) and Location(s)

Monday, **July 31, 2006** 10:00 a.m. to 12:00 p.m. & 1:00 p.m. to 3:00 p.m.

Mendota Mental Health Institute— Conference Center
301 Troy Drive
Madison, WI

Tuesday, **August 1, 2006** 10:00 a.m. to 12:00 p.m. & 1:00 p.m. to 3:00 p.m.

North Central Health Care Facilities— Lakeview Center
1000 Lakeview Drive
Wausau, WI

Thursday, **August 3, 2006** 10:00 a.m. to 12:00 p.m. & 1:00 p.m. to 3:00 p.m.

Waukesha Regional Office, Room 151
141 NW Barstow St.
Waukesha, WI

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

Place Where Written Comments May be Submitted

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>.

Deadline for Comment Submission

The deadline for submitting comments to the Department is 4:30 p.m. on August 10, 2006.

Analysis Prepared by the Department of Health and Family Services

The current rules for outpatient mental health clinics are under ss. HFS 61.91 to 61.98. These regulations address procedures for certification; required personnel; service requirements; and denial, involuntary termination or suspension of certification for outpatient mental health clinics; clinical supervision, clinical collaboration, and clinical consultation; written authorization of psychotherapy by a physician; initial assessments of clients and development of treatment plans; progress notes; discharge summaries; and record keeping. In addition to these requirements, these rules require clinics to ensure continuity of care for persons with mental disorders or alcohol and drug abuse problems by rendering or arranging for the provision of specified services, including but not limited to, residential facility placement; aftercare for continuing treatment in the community to help the patient maintain and improve adjustment following a period of treatment in a facility; and emergency care. Sections HFS 61.91 to 61.98 have not been comprehensively reviewed and rewritten since May 1981.

Section HFS 105.22 provides the requirements for medical assistance certification of psychotherapy providers, staffing of outpatient facilities, and medical assistance reimbursement for outpatient psychotherapy services. Section HFS 107.13 (2) details the medical assistance requirements for covered services for outpatient psychotherapy services, prior authorization and other limits and procedures, and non-covered services under the medical assistance program.

Section HFS 105.22, was last revised in 1991 and s. HFS 107.13 (2) has not been comprehensively reviewed and rewritten since March 1986. For outpatient mental health services, Medicaid reimburses psychiatrists, Ph.D. psychologists, advanced practice nurse prescribers with a psychiatric specialty, and outpatient mental health clinics that meet the requirements under proposed s. HFS 35.04 (2) (c). Proposed s. HFS 35.04 (2) (c) requires at least one mental health professional to be available to provide outpatient mental health services at least 37.5 hours per week and at least one mental health professional who is a psychiatrist, psychologist or advanced practice nurse prescriber who provides outpatient mental health services to consumers of the clinic at least 4 hours per month. This is not a change from current rules.

The Department proposes to repeal ss. HFS 61.91 to 61.98 and create ch. HFS 35 to do all the following:

Eliminate burdensome provisions that do not help to lead to the desired outcomes for persons who receive outpatient mental health services treatment.

Codify, in rule, the statewide variances that have been issued by the Department to outpatient mental health providers.

Increase flexibility for clinic operations including allowing certified clinics to alternatively meet the standards of one of several national accrediting bodies when applying for renewal certification; permitting clinics to provide either clinical supervision, clinical collaboration or clinical consultation as part of the clinic's quality improvement process; allowing mental health professionals to provide the recommendation for psychotherapy for consumers who are not medical assistance recipients; allow persons other than a physician or psychiatrist to provide mental health services; and allow clinics to provide psychotherapy services in the clinic, a branch office, or alternate location.

Establish certification and enforcement processes that are similar in both organization and content to the certification and enforcement processes set out in rules for other certified community mental health programs.

Clarify the minimum staff requirements for a clinic; and the role of professional staff of a clinic, including for persons who prescribe medication within a clinic.

Clarify record keeping requirements for psychotherapy notes.

Establish training requirements for clinic staff.

Add or expand language on admission, assessment, consent for treatment, treatment planning and medication administration; standards for electronic records, and consumer rights.

Incorporate the provisions under s. 50.065, Stats., and chs. HFS 12 and 13 that require caregiver background checks on clinic staff and reporting of clinic staff misconduct.

Increase consumers' participation in treatment planning resulting in treatment that is recovery–based and consumer–directed.

The Department proposes to revise ss. HFS 105.22 and 107.13 (2), to ensure that the language in these rules are consistent with the language in the proposed ch. HFS 35 and that these rules current practices and needs, such as, indexing the number of visits and dollar amounts before a prior authorization is required. Covered services are not proposed to change.

Effect on Small Business (Initial Regulatory Flexibility Analysis)

The Department is required under s. 51.42 (7) (b), Stats., to promulgate rules which govern the administrative structure deemed necessary to administer community mental health services; prescribe standards for qualifications personnel; prescribe standards for quality of professional services; govern eligibility of patients to the end that no person is denied service on the basis of age, race, color, creed, location or inability to pay; and to establish medication procedures to be used in the delivery of mental health services. Section 51.04, Stats., allows treatment facilities to apply to the Department for certification of the facility for the receipt of funds for services provided as a benefit to medical assistance recipients under s. 49.46 (2) (b) 6. f., Stats., or to a community aids funding recipient under s. 51.423 (2), Stats., or provided as mandated private insurance coverage under s. 632.89 (2), Stats. Section 51.42 (7) (a), Stats., requires the Department to review and certify county departments of community programs and community mental health programs to assure that the county department and programs are in compliance with the purpose and intent of s. 51.42 Stats., to enable and encourage counties to develop a comprehensive range of services offering continuity of care; to utilize and expand existing governmental, voluntary and private community resources for provision of services to prevent or ameliorate mental disabilities, including mental illness, developmental disabilities, and alcoholism and drug abuse; to provide for the integration of administration of those services and facilities organized under s. 51.42, Stats., through a county department of community programs; and to authorize state consultative services, review and establishment of standards and grants–in aids for such program of services and facilities.

The rules promulgated under s. 51.42 (7) (b), Stats., are currently codified under ss. HFS 61.91 through 61.98. These rules initially were effective on January 1, 1980 with the most recent revisions effective on May 1, 1981. The rules were written primarily for public mental health clinics, which were assumed to have access to an interdisciplinary team (e.g., psychiatrist, nurse, psychotherapists, etc.). During the past 25 years, many private providers have sought to become a certified outpatient mental health clinic in order to bill insurance companies for services provided under s. 632.89 (2), Stats.

Under the current regulations, a certified clinic must include a psychiatrist or a licensed psychologist, as well as a master's level social worker or a registered nurse with a master's degree with a psychiatric specialty. Other mental health professionals with training and experience in mental health may be employed as necessary, including persons with master's degrees and course work in clinical psychology, psychology, school psychology, counseling and guidance, or counseling psychology. The clinic is required to ensure continuity of care for persons with mental disorders or alcohol and drug abuse problems by rendering or arranging for the provision of and documentation of services such as evaluation to determine the extent to which the patient's problem interferes with normal functioning; residential facility placement for patients in need of a supervised living environment; partial hospitalization to provide a therapeutic milieu or other care for non–residential patients for only part of a 24–hour day; pre–care prior to hospitalization to prepare the patient for admission; aftercare for continuing treatment in the community to help the patient maintain and improve adjustment following a period of treatment in a facility; emergency care for assisting patients believed to be in danger of injuring themselves or others; rehabilitation services to achieve maximal functioning, optimal adjustment, and prevention of the patient's condition from relapsing; habilitation services to achieve adjustment and functioning of a patient in spite of continuing existence of problems; supportive transitional services to provide a residential treatment milieu for adjustment to community living; professional consultation to render written advice and services to a program or another professional on request. The current rule also requires the clinic to provide a minimum of 2 hours each of clinical treatment by a psychiatrist or psychologist and a social worker for each 40 hours of psychotherapy provided by the clinic. Specified personnel employed by a clinic are required to be under the supervision of a physician or licensed psychologist who meets the requirements of s. HFS 61.96 (1) (a) for a specified time relating to the number of hours of psychotherapy provided and frequency of a consumer's treatment sessions. The current rule further requires that each consumer receive an initial assessment and have a treatment record that contains a treatment plan, progress notes and discharge summary.

Through this order, the Department proposes to repeal ss. HFS 61.91 through 61.98 and create ch. HFS 35. Private and public clinics have reported difficulty in meeting the requirement of having a psychiatrist or psychologist to work in the clinic or to accept referrals from the clinic. To address this issue, the Department is adding 2 options for minimum staffing requirements that do not require a psychiatrist or psychologist to be a staff member of the clinic. The proposed rule also will respond to the issue of clinical supervision by a psychiatrist or psychologist. Many clinics report that this oversight model is costly, and that the process does not yield meaningful feedback to staff. To address this issue, the proposed rules will permit clinical collaboration, which is a process by which staff within the clinic review the treatment effectiveness and together identify possible changes in treatment approaches, staff training, policy changes, etc., as an alternative to clinical supervision.

The private sector outpatient mental health clinics that will be affected by the proposed rules are those that contract with county departments under s. 46.23, s. 51.42 or 51.437, Stats., to implement its community mental health services programs or to receive reimbursement for outpatient mental health services from the Wisconsin medical assistance program or private insurance under s. 632.89, (2) Stats. As of June 2006, there are 837 certified outpatient mental clinics located throughout Wisconsin with the largest concentrations in the

metropolitan areas of the central and southeastern parts of the state. The majority, 92 percent (772 clinics) are privately owned non-profit or for-profit entities. The remaining 8 percent are government owned. The privately owned clinics (as represented in the WABHS survey and assumed by the Department to be representative of the "average" clinic) are staffed primarily by licensed clinical social workers, licensed marriage and family therapists, or licensed professional counselors and support staff who provide approximately 788 hours of mental health services (and 237 hours of psychotherapy services) per week to children, adolescent, adults, and senior adults of various degrees of mental health issues and diagnoses, such as disorders relating to legal and illicit drug use; eating and sleeping disorders; depressive, bipolar, anxiety disorders; and personality disorders. Staff of these clinics also may include medical doctors, psychiatrists, psychologists, advanced practice nurse prescribers, persons with a master's in social work, persons with a master's of science, and substance abuse counselors. The current and proposed rules do not apply to or individual practitioners licensed by the Department of Regulation and Licensing to provide psychotherapy; these individuals can apply their trade as permitted by their license without being certified as an outpatient mental health clinic.

More than 10% of the certified outpatient clinics that will be affected by the proposed rules may be small businesses as defined under s. 227.11 (2) (a), Stats., as the average private clinic may be independently owned and operated and employs less than 25 employees or has gross annual revenues under \$5,000,000. As discussed below, the Department believes that the proposed rules will decrease costs to the average outpatient mental health clinic. The cost elements discussed in this analysis are staffing; documentation and reporting; recordkeeping; and the certification process. Any costs other than those specified in this analysis appear to be negligible and are inherent in the conduct of clinic business or are the result of required compliance with ch. 51, Stats, as a mental health provider.

The requirements in the proposed rule relating to reporting, record keeping, and the certification process and the associated costs are unchanged compared to the current rule, except that under the renewal certification process clinics that are accredited by nationally recognized bodies may request a waiver of part of the bi-annual process. In addition clinics, under specified conditions, may also be certified as exceptional clinics. Certification for exceptional clinics renews every three years. A grant of a waiver of certification requirements or receipt of exceptional certification may reduce a clinic's costs. Although the rules require additional specificity in regard to documentation in the content of assessment and treatment plan records, the costs of documentation are not expected to increase. There is no data or basis that indicates that the time involved completing the documentation of the assessment and treatment plan will increase. There are no capital costs imposed by the proposed rules.

The proposed rules are minimum requirements that give maximum flexibility under regulations that are required by statute and the intent and purpose of s. 51.42, Stats. The Department believes that the benefits of the proposed rules will outweigh any costs that they may impose because the proposed rules will benefit both consumers and clinics by improving access, protection, and quality of care and quality of life to consumers receiving or seeking mental health services and will reduce costs and the burden of regulation on outpatient mental health clinics that choose to be certified. For example, under the existing rule, services must be provided at the clinic office or a branch office identified in the certificate issued by the Department unless it is demonstrated

to the Department that there are specific barriers to care if services are not delivered outside the clinic. In addition, there currently are limitations in the use of a branch office, such as branch offices must be located within 30 miles of the main office and all treatment records must be stored in the main office. In the proposed rule, service delivery will be more flexible as clinics will be allowed to offer services where needed without having to seek additional certification and other limitations on the use of branch offices are also removed. This should increase the profitability of the clinic or reduce the costs of clinics by increasing the numbers of consumers that may be served and eliminating any costs that may be incurred in certifying and maintaining a branch office. The existing rules were written for comprehensive, publicly operated clinics. The proposed rules have eliminated the requirements that clinics provide, or provide access to residential facilities, partial hospitalization, pre-care for hospitalization, rehabilitation services, habilitation services, and supportive transitional services. The services under the proposed rule allow for services to be provided, contracted or provided by agreement. It is assumed that the therapist would expedite services as required for individual clients. The time and cost of procuring these services or agreements has been eliminated. The existing rule requires that every consumer have a referral from a physician for psychotherapy services. The proposed rule allows a licensed therapist to make the recommendation for therapy if the consumer is a non-Medicaid recipient, which reduces cost to the consumer and increases accessibility to services. This would be an estimated cost savings to the consumers (who are not Medicaid recipients) of \$100. However, recommendations for psychotherapy for Medicaid recipients must be by a physician as required under s. 49.46 (2) (b) 6. f., Stats.

Personnel requirements have been changed to allow alternatives to the existing rule and to recognize and reduce a clinic's staffing costs and the difficulty clinics reportedly have in obtaining staff. Existing rules require a minimum of two hours of clinical treatment by a psychiatrist or psychologist for each 40 hours of psychotherapy provided in a clinic. The proposed rule eliminates this requirement with an estimated minimum savings of \$19,000 per year for the small clinic. Larger clinics likely will save proportionally increased amounts. As reported in the WABHS survey, the average clinic already meets the minimum staffing requirements under the proposed rules. These clinics have sufficient numbers of staff working sufficient number of hours to meet the current and proposed minimum staff requirements. Although the Department estimates that approximately 150 currently certified clinics may not currently meet the minimum staff requirements or the proposed regulations, the Department believes that these and all other clinics will be able meet one of the options for minimum staffing without difficulty and without increased costs. The proposed rules provide two options for minimum staffing that do not require a psychiatrist or psychologist to be a staff member of the clinic, which acknowledges the shortage of psychiatrists and psychologists. A third option for minimum staffing is similar to the current regulations, but is more stringent in that it requires staff to be available to provide psychotherapy at least 37.5 hours per week, but is less stringent in that it requires only four hours of direct services from a psychiatrist, psychologist or advanced practice nurse prescriber. The proposed rule permits existing clinics to be "grandfathered" for a two-year period of time, to comply with the minimum staffing requirements in the proposed rules. If a clinic submits data regarding its reasonable, bona fide efforts to comply with the minimum staffing requirements, then the Department may grant a waiver request regarding the minimum staffing requirements for the clinic. The proposed staffing

requirements may be met either through contract or employment. Also, under the existing rule clinics are required to provide supervision by a psychiatrist or psychologist at the rate of 30 minutes for every 40 hours of therapy provided. The current rules require clinics to have clinical supervision from a psychiatrist or psychologist. As reported in the WABHS survey the oversight model type most used by clinics is clinical supervision from a psychiatrist or psychologist which costs the average clinic approximately \$701 per month and \$593 per month, respectively. The proposed rules will allow clinical collaboration, which is a process by which staff within the clinic review the treatment effectiveness and together identify possible changes in treatment approaches, staff training, policy changes, etc., as an alternative to clinical supervision. Clinics that already use clinical collaboration (which is currently allowed under a statewide waiver) have an average reported cost of \$551 per month. Based on the average costs for clinical supervision versus clinical collaboration, the cost-savings for using clinical collaboration is estimated to be approximately \$500 to \$1800 per year. The average clinic has annual gross revenues of \$593,000 per year (based on the revenue information reported in the WABHS survey). For the average clinic, the estimated cost savings of \$19,000 plus \$1,800 per year represent a 3.5 percent potential decrease in costs for a clinic if the clinic chooses clinical collaboration as an oversight model.

The proposed rules include waiver and variance provisions to allow clinics to use alternatives to rules when compliance is difficult because of availability of staff or remote geographic locations or strict enforcement of the requirement would result in unreasonable hardship on the outpatient clinic or consumer. A waiver or variance can also be used if there are more creative ways to meet a requirement or if “deemed status” from a national accrediting organization is recognized, which would eliminate duplicate costs to the agency for staff time to prepare for survey by both the national accrediting organization and Department staff. A waiver or variance would not be allowed if quality of care is adversely affected. The proposed rules allow for a provisional certification for a clinic that has no major deficiencies but has one or more minor deficiencies for up to one year, a regular certification for a clinic that has no major or minor deficiencies for up to two years, and an exceptional certification for a clinic that has no major or minor deficiencies and meets additional standards for up to three years.

Pursuant to the foregoing analysis, the proposed rules may decrease costs to the small businesses affected by the proposed rules. The proposed rules will affect a substantial number of small businesses, but will not have a significant economic impact on those businesses. Further, any increase in operating costs or decreases in revenues that may be caused by the proposed rules are expected to be less than the 2005 Consumer Price Index of 3.4%.

Small Business Regulatory Coordinator

Rosie Greer

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608–266–1279

Fiscal Estimate

State fiscal effect – The rule does not mandate any changes to fees charged to outpatient mental health clinics, increase the number of State surveyors, or otherwise create new or different requirements for the department. The rule does not change the provider requirements for who may bill Medicaid for outpatient services. In addition, the rule does not propose to change the services that are Medicaid reimbursable as an outpatient mental health service. Therefore, no increases or

decreases are anticipated in the Medicaid budget as a result of the rule changes.

Summarized below is the analysis of the potential fiscal impact the rule may have on county and private sector outpatient mental health clinics:

1. The proposed rule has no specific space, design, or organizational requirements for outpatient mental health clinics. The capital costs for the clinic are based on individual preferences, such as the number of staff, staff service time, and location of offices. The number of support staff would also be related to the size of the operation.

2. Ongoing operational costs would include the cost of contracting for services from a psychiatrist, psychologist or other mental health professional for the purpose of clinical collaboration on treatment. The proposed rule has added alternatives to reduce this cost over the existing rule. Specifically, the current rule requires clinical supervision from a psychiatrist or psychologist at an average reported cost in the survey of clinics of \$701/month and \$593/month, respectively. The proposed rule permits an oversight model of either clinical supervision or clinical collaboration, which has an average reported cost of \$551/month.

3. Ongoing transaction costs would include normal clinical data keeping which is factored into the hourly fee charged to the client. Typically, a therapeutic hour is calculated to be 45 minutes with the remaining 15 minutes used for documentation related to the therapy session and other record keeping. The cost of preparing for the actual compliance review would assume that the psychotherapist has a full schedule of therapy sessions, and would need to disrupt the normal schedule. However, most clinics do not function on a full 40 hours of therapy per week, a typical schedule would be 50% direct face-to-face time.

4. Start-up costs would vary with the skills of the individual. The tasks would include creation of policies and procedures, design of documentation and filing systems.

The expected average compliance cost may range from \$500 to \$1,000 depending on the size and nature of the operation. Other costs to consider:

1. Ability to finance compliance costs: The cost of compliance is primarily composed of individual time. There are no capital costs required by the rules.

2. Financial hardship: The rule is designed to reduce cost over the existing rule.

3. Competitiveness of enterprises and sectors: When a clinic elects to be certified under the existing or proposed rules, they have access to additional funding which would not otherwise be available. This includes funding from mandated insurance under WI Stats. 632.89 and Medicaid. The funding provides up to \$500 of coverage for those individuals with insurance or Medicaid. There is also the advantage of being recognized as complying with standards established by the state mental health authority.

4. Barriers to entry and expansion: The individual clinic seeking certification is required to meet minimum standards of compliance. This requires compliance with accepted standards of service. The primary barrier would be the therapist’s ability to comply with the accepted standards. There are no restrictions on the number and locations of agencies. The addition of staff which is the principal method of expansion simply requires the notification of the certifying agency of the qualifications of new staff. The same is true for adding additional branches to the clinics. The clinical operation is in control of the type and style of office they wish to create or add.

Employment effects: There should be no effect on the present employment within clinics. The rules have been

structured to allow qualified staff of existing operations to continue. There may be minimal effect on those operations, which were marginally operating under the existing standards. The proposed rules allow the hiring of additional staff for specific functions within the clinic. There are provisions to allow persons who are in the process of training and those with alternative qualifications to be employed by the clinic.

Specific cost saving changes: The proposed rules only apply to those clinics who choose to be certified. Individuals who are licensed to provide psychotherapy can apply their trade as permitted by their license. The proposed rules only apply to those clinical operations electing to be approved as an outpatient clinic as defined by the rules.

The following changes have been made to improve the quality of care and at the same time reduce costs and the burden of regulation.

1. The location of service delivery has been changed to be more flexible. Under the existing rule, services could only be provided at the clinic offices unless it was demonstrated there were specific barriers to care. This should increase the profitability of the clinic by increasing the numbers of persons that can be accessed.

2. "Deemed status" from a national accrediting organization is recognized. This would not duplicate costs to the agency for staff time to prepare for a survey by both the national accrediting organization and Department staff, potentially saving money during the certification period.

3. A waiver or variance of a requirement is permitted to allow clinics alternatives to rules when compliance is difficult due to availability of staff, remote geographic locations, or strict enforcement of the requirement would result in unreasonable hardship on the outpatient clinic or consumer. The waiver or variance would not be allowed if quality of care is adversely affected.

4. The personnel requirements have been changed to allow alternatives to the existing rule to reduce costs and difficulty of obtaining staff. Existing rules require a minimum of two hours of clinical treatment by a psychiatrist or psychologist for each 40 hours of psychotherapy provided. The new rule eliminates this requirement with a minimum savings of \$19,000 per year of cost for the small clinic. Larger clinics will save proportionally increased amounts.

5. Under the existing rule, clinics are required to provide supervision by a psychiatrist or psychologist at the rate of 30 minutes for every 40 hours of therapy provided. The cost for a small clinic would be approximately \$5,000 per year. The new rule allows clinical collaboration with other licensed staff to provide for this function.

6. Service requirements have been extensively reduced to recognize the wider variety of clinics and methods of providing care. The existing rules were written for publicly operated clinics. Private clinics have been allowed to apply for certification if they agree to comply with the rules. The proposed rules have eliminated the requirements that clinics provide, or provide access to residential facilities, partial hospitalization, pre-care for hospitalization, rehabilitation services, habilitation services, and supportive transitional services. The services under the proposed rule may be provided, contracted or provided by agreement. It is assumed that the therapist would expedite services as required for individual clients. The time and cost of procuring these services or agreements has been eliminated.

7. The existing rule requires that every consumer must have a referral from a physician for psychotherapy services. The proposed rule allows the licensed therapist to make the

recommendation for therapy, which reduces cost to the consumer and increases accessibility to services. This would be an estimated cost savings to the consumers (who are not Medicaid recipients) of \$100.

Obtaining Copies of Rules and Fiscal Estimate

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

Contact Person

Dan Zimmerman
 Department of Health and Family Services
 Bureau of Mental Health & Substance Abuse Services
 Room 455
 1 W. Wilson St.
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**Notice of Hearing
 Health and Family Services
 (Health, chs. HFS 110—)
 [CR 06-075]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 146.50 (4) (c), (5) (b), (6) (b) 2., (8m), (13), and 227.11 (2), Stats., and interpreting ss. 146.50 (1) (d) to (g), (4) (c), (5) (b) and (d), (6), (9), (10), (13) and 146.53 (5) (g), Stats., the department proposes to modify rules relating to licensing emergency medical technicians and affecting small businesses.

Hearing Date(s) and Location(s)

Hearing Date & Time	Hearing Location
July 25, 2006 1:00 PM to 3:00 PM	Dept. of Health & Family Services 1 W. Wilson St., Rm. B139 Madison, WI
July 26, 2006 6:00 PM to 8:00 PM	Business Education Center Chippewa Valley Technical College Room 100A (RCU Community Room) 620 West Clairemont Avenue Eau Claire, WI
July 27, 2006 6:00 PM to 8:00 PM	Northwest Technical College Business Center Room 213 2740 West Mason Street Green Bay, WI

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

Place Where Written Comments May be Submitted

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>.

Deadline for Comment Submission

The deadline for submitting comments to the Department is 4:30 p.m. on July 31, 2006.

Analysis Prepared by the Department of Health and Family Services

Wisconsin has two levels of emergency medical services. They are basic life support and advanced life support. These two levels are distinguished by the skills and medications that can be used by emergency medical services personnel when performing pre–hospital care. At the basic life support level, the department licenses individuals as emergency medical technician–basic (EMT–basic) and emergency medical technician–intravenous (EMT–basic IV) and certifies individuals as First Responders. At the advanced life support level, the department licenses individuals as provisional emergency medical technician–intermediate (provisional EMT–intermediate), emergency medical technician–intermediate (EMT–intermediate), and emergency medical technician–paramedic (EMT–paramedic). The requirements for basic life support are codified in chs. HFS 110 and HFS 113. Requirements for advanced life support are codified in chs. HFS 111 and HFS 112.

The training and competency requirements for the EMT–basic IV license are identical to the training and competency requirements for the provisional EMT–intermediate license. But because the EMT–basic IV requirements are codified in the basic life support code, ambulance service providers are reimbursed at the basic life support level of care instead of the advanced life support level of care. The ambulance service provider industry report that this situation is having a negative fiscal impact on ambulance service providers that use EMT–basic IV licensees to provide emergency medical services and may eventually cause a reduction of services in the communities that they serve.

To maintain the level of emergency medical services that are currently being provided and to avoid confusion about the skills and level of care provided by the EMT–basic IV licensee, the department proposes to change the name of the EMT–basic IV license to EMT–intermediate technician and move the licensing requirements to ch. HFS 111. No changes to skills and competency requirements are being proposed. The department also proposes to modify the continuing education requirements under ch. HFS 110 to allow ambulance service providers flexibility in providing refresher training to EMT–basic licensees. This change will reduce financial and scheduling burdens on providers by allowing them to use their training dollars more cost effectively, and it will create uniformity between the basic refresher requirements and the refresher requirements that are in place for the other skill levels.

The department will implement these changes in a substantially identical emergency rule to become effective on July 1, 2006, because under current s. HFS 111.045, individuals who are licensed as provisional EMT–intermediate licensees will become EMT–basic IV licensees effective July 1, 2006. If this occurs, it's likely that the currently reported negative affects on the ambulance provider industry will increase.

Effect on Small Business (Initial Regulatory Flexibility Analysis)

In Wisconsin there are approximately 430 ambulance service providers. Approximately 80% are volunteer (not for profit) or owned by private for profit entities. The remaining 20% are government owned. A total of 129 ambulance service providers and 2812 licensed individuals in 48 counties currently provide emergency medical services at the

EMT–basic–IV (74) or EMT–provisional intermediate (55) level to approximately 2.65 million Wisconsin residents.

The provider industry estimates that these ambulance service providers are losing approximately \$1.5 million dollars in reimbursement revenues annually due to the codification of the EMT–basic IV services in ch. HFS 110 as basic life support. The loss is likely to increase when the provisional EMT–intermediate is renamed EMT–basic IV effective July 1, 2006, and an estimated 95% of the individuals who are currently licensed and titled as provisional EMT–intermediate will be renamed EMT–basic IV. Consequently, the level of emergency medical services provided in over half of the state's 72 counties may be reduced or become non–existent unless the proposed changes are implemented.

The department believes the proposed changes will have a positive fiscal effect on ambulance service providers as the proposed changes are likely to increase revenues through increased reimbursement. The proposed rules do not require any additional reporting or record keeping, or other requirements that may increase costs or decrease revenues.

Pursuant to the foregoing analysis the proposed rules will have a positive fiscal effect on ambulance service providers, including those that may be small businesses.

Small Business Regulatory Coordinator

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Fiscal Estimate

Currently the department sets standards for different categories of Emergency Medical Technicians (EMT) in rule. By amending this administrative rule, the Department proposes to eliminate the category of EMT–basic IV, retain the category of provisional EMT–intermediate (which is due to sunset on June 30, 2006), and rename both categories of providers as EMT–intermediate technicians. This change will allow providers with specific skill levels, including advanced life support, to be classified appropriately. This change in rule allows these categories of EMT providers to be placed in the appropriate rule, which defines their scope of practice more adequately. As a result, ambulance service providers will be able to charge for the more complex skill sets at a higher rate based on the treatment modalities that are utilized and individual ambulance providers will be able to increase their revenues. The addition of more flexible renewal requirements will allow services to better budget and use their training dollars more efficiently. This is a significant issue with regard to reduced local budgets.

Ambulance service providers report that they cannot continue to cover the costs of training and operating at the advanced life support level of care while being reimbursed at the basic life support level of care. The provider industry estimates that Wisconsin ambulance service providers are losing approximately \$1.5 million dollars in reimbursement revenues annually due to the codification of the EMT–basic IV services in ch. HFS 110 as basic life support rather than in ch. HFS 111 as advanced life support. The loss of revenue would increase if the current provisional EMT–intermediate were renamed EMT–basic IV when the category of provisional EMT–intermediate sunsets, as would happen under the current rule. However, this rule change will reclassify both categories as EMT–intermediate technicians, which will allow ambulance service providers to charge for both at the higher rate of reimbursement. Medical insurance providers and other entities responsible for health care costs may see some increase in expenses as a result of this change.

In many cases now, Medicaid reimburses ambulance providers for the actual level of services required. As a result, there are not likely to be significant increased expenses for Medicaid as a result of this rule change. Without this rule change and the potential for rate increases, some EMT providers may not be able to continue to operate. The level of services provided in some communities would be likely to decrease or disappear. This rule change will help to ensure that an adequate emergency medical services system remains in place in Wisconsin.

Obtaining Copies of Rules and Fiscal Estimate

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

Contact Person

Dan Williams
 Department of Health and Family Services
 Division of Public Health – Emergency Medical Services
 1 West Wilson Street Room 118
 P.O. Box 2659
 Madison, WI 53701-2659
 608-261-6870
willidp@dhfs.state.wi.us

Notice of Hearing Health and Family Services (Health, Chs. HFS 110—) [CR 06-086]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2), 250.04 (1) and (7) and 254.47, Stats., interpreting ss. 254.47 and 254.85, Stats., the Department of Health and Family Services will hold a public hearing to consider the Department's proposal to repeal and recreate ch. HFS 172 relating to pools and water attractions, and affecting small business.

Hearing Information

Two public hearings will be held, as follows:

Wednesday, August 9, 2006 Time: 10:00 AM	Dept. of Health and Family Services 1 West Wilson Street Room B 139 Madison, WI 53703
Thursday, August 10, 2006 Time: 10:00 AM	Marathon County Health Dept. 1200 Lakeview Drive Room 200 Wausau, WI 54403-6797

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

Written comments

Written comments may be submitted at the public hearing, or in lieu of attending a public hearing written comments can be submitted by regular mail or email to:

Tracynda Davis
 1 W. Wilson Street, Room 150
 Madison, WI 53702
 Phone: 608-266-8924
 Fax: 608-267-3241
 Email: davistl@dhfs.state.wi.us

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet website at <http://adminrules.wisconsin.gov>.

The deadline for submitting comments is **4:30 p.m., on Friday, August 17, 2006.**

Analysis prepared by the Dept. of Health and Family Services

The Department of Commerce has authority related to the design and construction of public pools and water attractions, including plan approval and supervision of construction. When a facility has been properly designed and built, the Department of Health and Family Services (DHFS) then reviews the pool for operation, safety and maintenance and gives the pool a permit to operate if all conditions of ch. HFS 172 are met.

DHFS proposes revisions to ch. HFS 172 based on recent scientific research and extensive input from pool designers and operators. The rule will generally not have an effect on standard rectangular pools and whirlpools that have not made changes resulting in increased risk. Waterslides that were previously regulated by the Department of Commerce, are included in these rule revisions, requiring permitting, either separately or as a pool appurtenance, and annual inspection by DHFS for operation and safety. A certified structural engineer will be required to evaluate the physical condition of the slide every 5 years for bolt degradation and physical stress load capabilities.

The rule also proposes changes related to lifeguard and attendant staffing, to add flexibility in these plans.

Chapter HFS 172, Wis. Adm. Code, is proposed to correspond to the recent changes made by the Department of Commerce in ch. Comm 90, Wis. Adm. Code.

The Certified Pool Operator (CPO) requirement is proposed only for operators of water attractions. Traditional pools used for swimming, diving, wading, relaxation, or therapy would not require certified operators. Water attractions include activity pools, leisure rivers, plunge pools, water slides, vanishing edge pools, vortex pools, and wave pools. CPO training and registration can be obtained through two national organizations, and the Department will evaluate other organizations upon request. Currently, there are 4000 licensed pools in WI; over 50% are managed by a CPO, including nearly all water attractions. Thus, the requirement to have a CPO will have minimal impact, as the industry already recognizes the importance of and has trained operators accordingly.

Effect on Small Business (Initial Regulatory Flexibility Analysis)

Since the last revision to ch. HFS 172 in 1989, the water recreation industry has changed significantly. The newly revised code addresses many pool types, and is designed to allow sufficient flexibility for the development of new types of water attractions in the future. Also, as of May 2004, pool and water slides, formerly inspected by the Department of Commerce, will now fall under the purview of DHFS. A

Memorandum of Understanding is being developed between the Department of Commerce and DHFS to ensure ongoing seamless approval and inspection of pool slides. The new rule provisions also address additional appurtenances such as climbing and walking features.

These code provision changes should have a minimal impact on small business. The water recreation industry and the operators of small businesses with pools were well represented on the advisory committee, and consensus was obtained before these final rule changes were proposed.

This rule revision will not impose significant increases in licensing and operating fees. 90% of the 4,000 pools in Wisconsin will not be affected by these revisions. The 10% of pools that will be affected include the largest facilities, most of which already meet the CPO and life guarding requirements, and potentially include poorly or illegally operated pools.

The following issues from the revision of ch. HFS 172 may potentially affect small business operators:

- Lifeguard requirements
- CPO requirements
- Fees for inspections, pre-inspections, re-inspections, and operating without a license

• **Lifeguards:** There are nearly 4,000 licensed individual pools in Wisconsin, but only half of those pool facilities include 2 or more pools. DHFS has no current definitive breakdown of the number of facilities the new lifeguarding requirements would affect, but estimates that perhaps 200 to 300 facilities will fall under the provisions of this rule, and most of these facilities are already in full compliance. These rule revisions alter the codified lifeguard requirements, but are not necessarily more stringent. There will be ongoing costs related to the turnover in lifeguard positions, but water attraction operators build lifeguard costs into their business plans. Labor and training costs are detailed below.

• **Revenue analysis of lifeguard staffing plans:** The range of revenues regarding pool operations is vast. Many pools show no direct income; e.g., hotels or apartment complexes that do not charge for admission to the pool. Nor is there a definable difference in occupancy rates between properties with a pool versus properties without. Alternatively, there are large water attractions in Wisconsin that generate millions of dollars in revenue from their extensive water attractions.

• While 98% of pool operators qualify as small businesses, the biggest 5% of pool operators have facilities requiring life guarding and therefore the majority of operators will not be affected by these rule changes, as these facilities are already in compliance. Moderately sized hotels have recently begun expanding their pools by adding slides, interactive play features, etc. These facilities will feel the impacts of the rules the most, because they are approaching the line distinguishing a public pools from a water attraction. These facilities will need to hire staff members to supervise their pools and either hire already certified lifeguards or train existing staff. DHFS estimates 20 hotels per year would fall into this category.

Costs to agencies: There is no additional cost to state or local agencies related to meeting the lifeguard requirements.

DHFS will absorb minimal costs associated with training inspectors to properly inspect water slides. Each inspection of pool slides should take no more than 20 to 30 additional minutes while the inspector is already present.

• **Certified Pool Operator (CPO) Requirements:** Wisconsin has a large pool of certified pool operators, and regularly adds

more. From April 2001 to April 2006, 2041 persons graduated from Wisconsin Certified Pool Operator courses. Thus, the industry should feel little impact from these new rule provisions, as most facilities that need a CPO either already have a CPO or can choose from the pool of qualified individuals.

• **Inspection, Pre-inspection and Re-inspection fees:** The addition of pre-inspection and re-inspection fees, as well as higher fees associated with waterslide inspections may have an economic impact related to this rule. A pre-inspection is an examination of the facility prior to the facility's opening to ensure compliance with applicable statutes and administrative rules. Re-inspections occur when a facility presents a potential hazard to the general public if conditions are not corrected, and therefore an additional inspection is necessary.

• **Water slide inspection fees:** DHFS follows a system of rating, inspecting, and charging establishments according to the relative risk related to and the complexity of the operation. Accordingly, a revised fee structure has been created with the following changes:

- Traditional pool or hot tub no change
- Water attraction without slides . . . plus \$25 annually
- Water attraction with 1 or 2 slides . . . plus \$100 annually
- Additional water slides plus \$150 annually
- Additional pool slides (smaller) . . . plus \$50 annually

DHFS estimates there are 400 water attractions without slides, 200 with 1 or 2 slides, an additional 20 water slides, and an additional 20 pool slides. Increased revenue to DHFS under the new rule is estimated to be:

400 * \$25 = \$10,000
 200 * \$100 = \$20,000
 20 * \$150 = \$3,000
 20 * \$50 = \$1,000
 Total revenue increase = \$34,000

• **Operating without a license:** A fee equal to the annual licensing fee has been added to the rule for facilities found to be purposefully operating without a license. This fee will not apply to someone who is merely late in renewing, or who inadvertently misplaces the fee notice.

Benefits of the code revisions:

Pool operators understand the need to keep the public safe, and the goal of keeping their operations open. These administrative rule revisions address both of those issues.

- Serious but flexible lifeguard plans will help pool operators keep their operations safe.
- A Certified Pool Operator is an expert at maintaining water quality and pool safety, establishing policies and procedures to provide a constant safe environment, and training staff. Certified Pool Operators are also trained in monitoring and testing pool water, in order to maintain proper pool chemical balances.

• The test kit reagent required in these rule revisions is less expensive than kits currently used. Since pools are tested up to 4 or more times per day, over time, this will mean a considerable savings to the industry.

• The new fees require services to be paid for by the operators who require the services rather than by dividing them among all operators.

Operations that are built or redesigned so that pools will be direct sources of income will face additional training and labor costs as outlined above. Most pools in Wisconsin are simple swimming pools or spas designed and operated as an

amenity to lodging. These operations will feel little or no impact from the proposed revisions.

Fiscal estimate

The DHFS proposes to repeal and re-establish HFS 172 regulating the operation and maintenance of public pools and water attractions. Presently, the DHFS or agent local health departments are required by statute to perform a pre-inspection – a detailed examination of a new public pool or water attraction to ensure administrative code compliance – prior to issuing a license. The proposed changes in this rule would establish a pre-inspection fee to recover the program costs associated with the pre-inspection. The DHFS also proposes to establish fees for re-inspection of facilities to recover costs associated with facilities that are found to have significant violations of administrative code which would require a follow-up inspection. The proposed rule changes also incorporate the transfer of responsibility for the routine safety inspection of waterslides from the Department of Commerce to the Department of Health and Family Services or agent local public health departments and include fees to recover the costs associated with these inspections. The proposed fees are scaled to the complexity of the facility to reflect the amount of time and cost associated with the inspection. It is estimated that the fee changes described above will result in approximately \$100,000 additional program revenue to the DHFS annually.

The proposed rule changes would require additional responsibilities of the local agent public health departments. Staff would be required to verify lifeguard staffing plans for public pools and water attractions, and inspect waterslides within their jurisdiction. Local agent public health departments are able to set annual license fees to recover the costs of these additional responsibilities.

It is estimated that total annual costs to the industry for the new pre-inspection fees for approximately 200 to 400 newly constructed facilities and facilities changing ownership would be \$50,000 to \$60,000. It is estimated that 100 to 200 facilities will require re-inspections annually due to significant compliance problems resulting in annual costs to the industry of \$7,500 to \$15,000. The proposed pre-inspection and reinspection fees will not impact existing and compliant public pools and water attractions. An estimated 200 new facilities with water or pool slides will apply for permits and be charged fees of between \$50 to \$150, for a total estimated cost to the industry of \$20,000 annually. Total charges to the industry from permit fees, pre-inspection fees, and re-inspection fees are estimated to be approximately \$100,000 annually.

There will be fiscal impacts to existing public pools and water attractions associated with proposed new health and safety operational requirements. Facilities may require an additional lifeguard or attendant. It is difficult to estimate the number of facilities impacted by this proposed change; however it is estimated that only about 200 to 300 of the 4,000 licensed individual facilities in Wisconsin may be affected and most of those are likely already in full compliance. Additionally, the rule proposes that water attractions employ a certified pool operator. While most existing water attractions are already in compliance with this proposed change, it is estimated that approximately 20 new or expanded facilities will be constructed annually.

Document Copies

A copy of the full text of the rules and the full text of the fiscal estimate, and other documents associated with this rulemaking may be obtained, at no charge, from the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov> or by contacting:

Tracynda Davis
1 W. Wilson Street, Room 150
Madison, WI 53702
Phone: 608-266-8924
Fax: 608-267-3241
Email: davistl@dhfs.state.wi.us

Small Business Regulatory Review Coordinator

For matters or comments concerning a rule's impact on small businesses, contact:

Rosie Greer, DHFS Administrative Rules Manager (608) 266-1279 or Email: greerrj@dhfs.state.wi.us

Notice of Hearing Insurance [CR 06-083]

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41(3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Section Ins, Wis. Adm. Code, relating to defined network plans, preferred provider plans, limited service health organizations and limited scope plans and affecting small businesses.

Hearing Information

Date: **August 2, 2006**

Time: 1:30 p.m., or as soon thereafter as the matter may be reached

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

Written comments

Written comments can be mailed to:

Julie Walsh
Legal Unit – OCI Rule Comment for Rule Ins
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Written comments can be hand delivered to:

Julie Walsh
Legal Unit – OCI Rule Comment for Rule Ins
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53702

Comments can be emailed to:

Julie Walsh
Julie.Walsh@oci.state.wi.us

Comments submitted through the Wisconsin Administrative Rule website at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 8th day after the date for the hearing stated in this Notice of Hearing.

Copy of rule and contact person

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

Email: Inger.Williams@oci.state.wi.us
Phone: (608) 264-8110
Address: PO Box 7873, Madison WI 53707-7873.

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

1. Statutes interpreted: Sections 600.01, 628.34 (12) and 632.85, and ch. 609, Stats.

2. Statutory authority: Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 609.20 and 609.38, Stats.

The Commissioner of Insurance is authorized to promulgate rules under ss. 601.41 and 609.20, Stats. Section 609.20, Stats., permits the Commissioner to promulgate rules relating to preferred provider plans and defined network plans in order to ensure enrollee access to health care services and ensure continuity of health care while recognizing the differences between preferred provider plans and defined network plans.

4. Related Statutes or rules: There are no related statutes or rules.

Plain language analysis and summary

The proposed rule:

1) Eliminates the term “limited scope plan” from provisions governing defined network and preferred provider plans. The commissioner’s intent is to eliminate the application to limited scope plans of certain rules promulgated in Clearinghouse Rule 05–059.

2) Changes the provision governing improper utilization practices so as prohibit improper practices but not deem the insurer a defined network plan.

3) Eliminates specific requirements relating to network location, hours, waiting times and availability of after hours care but retains the requirement that access must be reasonably prompt consistent with normal practices and standards in the area.

4) Makes it clear that coverage of emergency medical services at in–network cost sharing is not required after the point that the provider has met its obligation to treat the enrollee under federal law.

Comparison with federal regulation

There is no federal regulation that addresses the activities regulated by the proposed rule.

Comparison of adjacent states

Iowa: Iowa statute §514C.16, requires a carrier which provides coverage for emergency services to be responsible for charges for emergency services furnished outside any contractual provider network or preferred provider network for covered individuals. Iowa Administrative Code s. 191–27.4 (1)(a), requires a health benefit plan which provides for incentives for covered persons to use the health care services of a preferred provider to contain a provision that if a covered person receives emergency services specified in the preferred provider arrangement and cannot reasonably reach a preferred provider, emergency services rendered during the course of the emergency will be reimbursed as though the covered person had been treated by a preferred provider, subject to any restrictions which may govern payment by a preferred provider for emergency services. Iowa statute §514B and Administrative Code 191–40.21, require HMOs to reimburse a provider of emergency services after a review of the care and may not deny reimbursement solely on the grounds that the services were provided by non–contracted providers.

Iowa statute §514F.3 requires the commissioner of insurance to adopt rules for preferred provider contracts and organizations and to adopt rules related to preferred provider arrangements. Iowa statute §514K.1 requires HMOs, organized delivery systems or an insurer using a preferred

provider arrangement to provide to its enrollees written information that at a minimum must include the following; a description of the plan’s benefits and exclusions, enrollee cost–sharing requirements, list of participating providers, disclosure of drug formularies, explanation for accessing emergency care services, policy for addressing investigational or experimental treatments, methodologies used to compensate providers, performance measures as determined by the commissioner and information on how to access internal and external grievance procedures. In addition the Iowa department must annually publish a consumer guide providing a comparison by plan on performance measures, network composition, and other key information to enable consumers to better understand plan differences.

Iowa Administrative Code 191–27.3 (1), requires preferred provider arrangements to establish the amount and manner of payment to a preferred provider, the mechanisms designed to minimize cost of the health benefits plan and ensure reasonable access to covered services under the preferred provider arrangement. Iowa Administrative Code 191–27.4 (1) (b), requires preferred provider plans to contain a provision that clearly identifies the differentials in benefit levels for health care services of preferred providers and non–preferred providers. Iowa Administrative Code 191–27.4 (2), requires that if a health benefit plan provides difference in benefit levels payable to preferred providers compared to other providers, such difference shall not unfairly deny payment for covered services and shall be no greater than necessary to provide a reasonable incentive for covered persons to use the preferred provider.

Illinois: Illinois statutory code 215 ILCS 5/370o, requires any preferred provider contract to provide the enrollee emergency care coverage regardless of whether the emergency care is provided by a preferred or non–preferred provider and the coverage shall be at the same benefit level as if the service or treatment had been rendered by a plan provider. Section 215 ILCS 5/370i, sec. (a) prohibits policies from containing provisions that would unreasonably restrict the access and availability of health care services for the enrollee. Section 215 ILCS 134/40, sec. 40 (d) requires a health care plan to pay for services of a specialist with the enrollee only responsible for the services as though the services were provided by an in–network provider when the plan does not have the specialist that the enrollee needs for the care of an on–going specific condition. The primary care physician arranges for the enrollee to see a specialist that is within a reasonable distance and travel time and the primary provider notifies the plan of the referral.

The information required to be provided to consumers is contained in s. 215 ILCS 134/15, that requires annual reporting of participating health care providers in the plan’s service area and in addition to basic terms of the plan, includes disclosure of out–of–area coverage, if any, financial responsibility of enrollees including co–payments, deductibles, premium and any other out–of–pocket expenses, continuity of care, appeal rights and mandated benefits. Illinois Administrative Code s. 5420.40, requires disclosure so that a person can compare the attributes of various health care plans based upon a description of coverage. This disclosure includes that 2 appendices are completed that detail specific co–payments, coinsurance, deductibles, and other cost–sharing provisions for services that must be included with the policy for consumer information.

In addition to the worksheets that provide consumers with detailed information, Illinois statutory code s. 215ILCS 5/356z.2, also requires an insurer that issues or renews a individual or group accident and health policy and arranges, contracts with or administers contracts with providers whereby the beneficiary are provided an incentive to use the

services of such provider must include the following disclosure of limited benefits in its contracts and evidence of coverage:

WARNING, LIMITED BENEFITS WILL BE PAID WHEN NON–PARTICIPATING PROVIDERS ARE USED. You should be aware that when you elect to utilize the services of a non–participating provider for a covered service in non–emergency situations, benefit payments to such non–participating provider are not based upon the amount billed. The basis of your benefit payment will be determined according to your policy’s fee schedule, usual and customary charge (which is determined by comparing charges for similar services adjusted to the geographical area where the services are performed), or other method as defined by the policy. **YOU CAN EXPECT TO PAY MORE THAN THE COINSURANCE AMOUNT DEFINED IN THE POLICY AFTER THE PLAN HAS PAID ITS REQUIRED PORTION.** Non–participating providers may bill members for any amount up to the billed charge after the plan has paid its portion of the bill. Participating providers have agreed to accept discounted payment for services with no additional billing to the member other than co–insurance and deductible amounts. You may obtain further information about the participating status of professional providers and information on out–of–pocket expenses by calling the toll free telephone number on your identification card. (Emphasis in original.)

Illinois statute s. 215 ILCS 134/80 requires that health care plans have procedures for quality assessment program including in s. (3) and (4) that require plans have a procedure for remedial action to correct quality problems that have been verified in accordance with the written plan’s methodology and criteria, including written procedures for taking appropriate corrective action and follow–up measures implemented to evaluate the effectiveness of the action plan.

Illinois Administrative Code s. 5420.50 requires that all provider agreements contain provisions providing for advance notice from providers when terminating from the plan and requirements that the plan notify affected enrollees on a timely basis. The notice provided to the enrollee must contain information on how enrollees are to select a new health care provider.

Minnesota: Minnesota statute s. 62A.049, prohibits an accident and sickness policy from requiring prior authorization in cases of emergency confinement or emergency treatment. The enrollee or authorized representative must notify the insurer as soon as reasonably possible. Section 62Q.55 requires managed care organizations including preferred provider organization, to provide enrollees with available and accessible emergency services. Services shall be covered whether provided by participating or nonparticipating providers and whether provided within or outside the health plan’s service area. Section 62D.20 and s. 4685.0700, Minnesota Administrative Code, require HMOs to provide out–of–area services including for emergency care.

Minnesota statute s. 62Q.49 (subd. 2) (a), requires all health plans to clearly specify how the cost of health care used to calculate any co–payments, coinsurance or lifetime benefits will be affected by the contracting in which health care providers agree to accept discounted charges. Further any marketing or summary materials must be disclosed prominently and clearly explain the provisions relating to co–payments, coinsurance or maximum lifetime benefits.

Minnesota statute s. 62Q.58, requires that if an enrollee receives services from a nonparticipating specialist because a participating specialist is not available, the services must be

provided at no additional cost to the enrollee beyond what the enrollee would otherwise pay for services received from a participating specialist.

Minnesota statute s. 62Q.746, permits the department to request and the health plan to provide the following information including how the plan determines who are eligible to participating in the network, the number of full–time equivalent physicians, by specialty, non–physician providers and allied health providers used to provide services and summary data that is broken down by type of provider reflecting actual utilization of network and non–network practitioners and allied professionals by enrollees of the plan.

Michigan: Michigan statute s. 500.3406k, requires an expense–incurred hospital, medical or surgical policy that provides coverage for emergency health services, including an HMO plan, to provide coverage for medically necessary services provided to an enrollee for the sudden onset of a medical condition that manifests itself by signs and symptoms of sufficient severity, that the absence of immediate care could reasonably be expected to result in serious jeopardy to health without prior authorization.

Insurers that contract with providers are governed by the Prudent Purchaser Act of 1984 including preferred provider organization (MCL 550.50 et seq.). The organization that contracts with providers shall annually report to the commissioner basic utilization of the providers (MCL 550.56). Under MCL 550.53, organizations that contract with providers to control costs and utilization may limit the number of providers to the number necessary to assure reasonable levels of access to health care services, located within reasonable distance.

Summary of factual data and analytical methodologies

The information OCI used in support of this proposed rule includes the information described in the analysis of Clearinghouse Rule 05–059. However more specifically it includes the information provided by representatives of the insurance industry, preferred provider organizations, and providers in a series of meetings, and in responses to OCI’s requests for comments and information, concerning the topics addressed by the proposed rule.

Fiscal estimate

There will be no state or local government fiscal effect.

This rule will not have a significant fiscal effect on the private sector. Its effect will be to limit requirements otherwise applied by rules currently in effect, including Clearinghouse rule 05–059.

Initial regulatory flexibility analysis

This rule does not impose any additional requirements on small businesses. Its effect will be to limit requirements otherwise applied by rules currently in effect, including Clearinghouse rule 05–059.

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

- a. Types of small businesses affected: Insurers
- b. Description of reporting and bookkeeping procedures required: None beyond those currently required.
- c. Description of professional skills required: None beyond those currently required.

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

Notice of Hearings
Natural Resources
(Environmental Protection – air Pollution
Control)
[CR 06–079]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 285.11 (1) and (6), Stats., interpreting ss. 285.11 (6), 285.60 (5m) and 285.69 (1d), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 406 and 410, Wis. Adm. Code, relating to construction permit waiver requests from air contaminant sources. The State Implementation Plan developed under s. 285.11 (6), Stats., is revised. Section 285.60 (5m), Stats., as created by 2003 Wisconsin Act 118) requires the Department, by rule, to allow sources who file an air pollution control construction permit application to request a construction permit waiver under certain circumstances. Construction permit waivers would allow a facility to start on–site preparation, including, but not limited to, site clearing, grading, dredging or landfilling prior to receiving a construction permit when necessary to avoid undue hardship. The Department must act on the waiver request within 15 days of receipt of the request. There is a \$300 non–refundable fee associated with filing a waiver request.

Section NR 406.03 (2) contains criteria for allowing a facility to obtain a commence construction waiver. The facility must first submit a complete construction permit application and a waiver request. Section NR 410.03 (1) (bm) establishes the fee.

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: All air pollution sources that have a permit or are required to obtain a construction permit, except for those sources that need an air construction permit under federal law.

b. Description of reporting and bookkeeping procedures required: No additional reporting or bookkeeping requirements are created.

c. Description of professional skills required: No additional skills are required.

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 contact Robert Eckdale at (608) 266–2856 or by e–mail at Robert.Eckdale@dnr.state.wi.us 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:

Monday, **August 7, 2006** at 1:00 p.m.
 Pinery Room, Portage County Library
 1001 Main Street
 Stevens Point

Tuesday, August 8, 2006 at 1:00 p.m.
 Room 609, GEF #2 State Office Building
 101 South Webster Street
 Madison

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search the Web site using the Natural Resources Board Order number AM–08–06.) Written comments on the proposed rule may also be submitted via U.S. mail to Mr. Joe Brehm, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e–mail to Joseph.Brehm@dnr.state.wi.us. Comments may be submitted until August 18, 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. If you do not have Internet access, a personal copy of the proposed rule and fiscal estimate may be obtained from Robert Eckdale, (608) 266–2856, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707.

Notice of Hearing
Transportation
[CR 06–082]

NOTICE IS HEREBY GIVEN that pursuant to ss. 343.14 (2) (er), 343.17 (3), 343.20 (1m) and 343.50 (5) and (6), Stats., and interpreting s. 343.14 (2) (er), Stats., the Department of Transportation will hold a public hearing in Room 144–B of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **3rd day of August, 2006**, at 1:00 PM, to consider the amendment of ch. Trans 102, Wisconsin Administrative Code, relating to operator’s licenses and identification cards.

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

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

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 343.14 (2) (er), Stats.

Statutory authority: ss. 343.14 (2) (er), 343.17 (3), 343.20 (1m) and 343.50 (5) and (6), Stats.

Explanation of agency authority: 2005 Wisconsin Act 126 requires that a person applying for a driver’s license or identification card provide documentary proof of citizenship or legal presence in the United States.

Related statute or rule: ss. 343.06, 343.14 and 343.20, Stats.

Plain language analysis: 2005 Wisconsin Act 126 requires all persons applying for an original, reissue, reinstatement, renewal or duplicate Wisconsin driver’s license or identification card on or after April 1, 2007 to show documentary proof of citizenship or legal presence in this country. Currently, applicants for a driver’s license or identification card are required to show proof of identity,

name and date of birth, and residency. 2005 Wisconsin Act 126 also requires operator's licenses and identification cards to expire on the date the person's legal presence in the United States is no longer authorized. This rule implements these expiration dates.

Summary of, and preliminary comparison with, existing or proposed federal regulation: This proposed rule making moves Wisconsin towards compliance with the legal presence requirements of the federal REAL ID Act, which takes effect May 11, 2008.

Comparison with Rules in Adjacent States:

Michigan: No legal presence requirement.

Minnesota: Legal presence required.

Illinois: Legal presence required.

Iowa: Legal presence required.

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

Analysis and supporting documentation used to determine effect on small businesses: Some small businesses may be affected, if their employees who are not U.S. citizens do not have legal presence and consequently lose their driving privileges and require driving privileges to attend or perform their jobs. These costs are indeterminable.

Effect on small business: Indeterminable. 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: Costs incurred by the private sector is indeterminable. This rule does not directly affect business but may affect the work force. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Erin Egan, Department of Transportation, Bureau of Driver Services, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Egan by phone at (608) 266-1449.

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

Notice of Hearing

University of Wisconsin System

[CR 06-078]

NOTICE IS HEREBY GIVEN that pursuant to ss. 36.09 (1), 36.11 (1) and 36.13 (3), Stats., the Board of Regents of the University of Wisconsin System will hold a public hearing in Room 1820 Van Hise Hall, 1220 Linden Drive, in the City of Madison, Wisconsin on August 2, 2006 at 9:00 a.m. to consider the creation of rules relating to the dismissal of faculty and academic staff in special cases. Persons with disabilities requesting an accommodation to attend are asked

to contact Judith Temby in advance of the hearing at (608) 262-2324.

Analysis prepared by the Board of Regents of the University of Wisconsin System.

Statutes interpreted: Sections 36.09 (1), 36.11 (1) and 36.13 (3), Stats.

Statutory authority: Sections 36.09 (1), 36.11 (1) and 36.13 (3), Stats.

Explanation of agency authority: The Board of Regents of the University of Wisconsin System has the authority under Sections 36.09 (1), 36.11 (1) and 36.13 (3), Stats., to issue rules for the dismissal of faculty and academic staff members.

Related statute or rule: Current Wis. Admin. Code chs. UWS 4 and UWS 11.

Plain language analysis: The purpose of the proposed rules is to add provisions to Board rules regarding dismissal of faculty and academic staff to deal specifically with circumstances in which faculty and academic staff members have engaged in serious criminal misconduct, a category of just cause under the rule. The proposed rules would define serious criminal misconduct, provide protection for constitutionally-protected conduct, expression, or beliefs, and assure adequate due process in the dismissal proceedings.

SECTION 1 amends s. UWS 2.02 to provide that rules and procedures developed pursuant to ch. UWS 7 by the faculty of each institution shall be forwarded by the chancellor to the president and by the president to the board for its approval prior to their taking effect.

SECTION 2 creates ch. UWS 7 relating to dismissal of university faculty members who engage in serious criminal misconduct. SECTION 2 also defines "serious criminal misconduct", and provides that constitutionally-protected conduct, expression, or belief do not constitute serious criminal misconduct. SECTION 2 establishes expedited procedures for investigation and dismissal of faculty members who engage in serious criminal misconduct. SECTION 2 provides that a chancellor, after consultation with appropriate faculty governance representatives, may suspend a faculty member from duties without pay pending the final decision as to his or her dismissal in appropriate circumstances.

SECTIONS 3 AND 4 amend ch. UWS 11 to provide that just cause for dismissal of members of the academic staff includes "serious criminal misconduct" as defined in SECTION 5.

SECTION 5 amends ch. UWS 11 to provide for dismissal of members of the academic staff who engage in serious criminal misconduct. SECTION 5 also defines "serious criminal misconduct", and provides that constitutionally-protected conduct, expression, or belief do not constitute serious criminal misconduct. SECTION 5 establishes expedited procedures for investigation and dismissal of members of the academic staff who engage in serious criminal misconduct. SECTION 5 provides that a chancellor, after consultation with appropriate academic staff governance representatives, may suspend a faculty member from duties without pay pending the final decision as to his or her dismissal in appropriate circumstances.

Copies of the text of the rule may be obtained at no charge from the Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706.

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

Comparison with rules in adjacent states. There are no corresponding rules in adjacent states for comparison.

Summary of factual data and analytical methodologies: There were no factual data or analytical methodologies used to develop the proposed rules.

Analysis and supporting documents used to determine effect on small business: The proposed rules affect only faculty and academic staff of the University of Wisconsin System. They have no effect on small business.

Effect on small business: The proposed rules will have no effect on small business.

Fiscal estimate

The proposed rules will have no fiscal effect.

Agency contact person

Christopher L. Ashley, Senior System Legal Counsel, University of Wisconsin System Administration, 1808 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706. Telephone: (608) 262-3662. Email: cashley@uwsa.edu.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to: Christopher L. Ashley, Senior System Legal Counsel, University of Wisconsin System Administration, 1808 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706. Email to cashley@uwsa.edu. The deadline for written comments to the Board is 4:30 p.m. on September 29, 2006.

Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection
(CR 06-008)

Ch. ATCP 21, relating to plant pest import controls and quarantine.

Financial Institutions – Banking
(CR 06-045)

Ch. DFI-Bkg 74, relating to collection agencies.

Revenue
(CR 06-030)

Relating to liquor wholesaler warehouse facilities.

Transportation
(CR 06-043)

Ch. Trans 327, relating to motor carrier safety.

Transportation
(CR 06-048)

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

Rule orders filed with the revisor of statutes bureau

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

Health and Family Services

(CR 05-033)

An order affecting chs. HFS 105 to 107, relating to Medicaid reimbursement for dental services.
Effective 9-1-06.

Natural Resources

(CR 05-115)

An order affecting chs. NR 25 and 26, relating to allocation of lake trout and commercial fishing for lake trout in Lake Superior.
Effective 8-1-06.

Veterans Affairs

(CR 06-020)

An order affecting ch. VA 16, relating to the county transportation services grant program.
Effective 8-1-06.

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