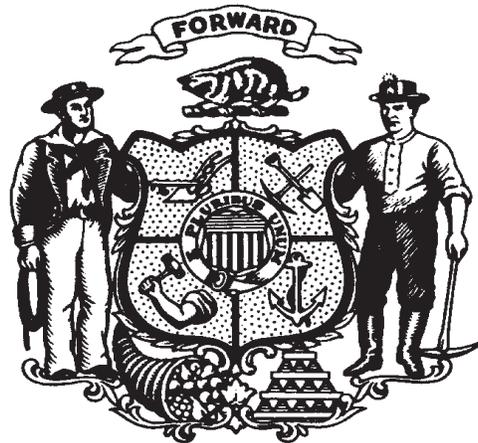


# Wisconsin Administrative Register

No. 611



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## Emergency rules now in effect

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

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

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

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

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

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

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### 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: See section 8 (2) of 2005 Wis. Act 89.**

**Hearing Date: August 11, 2006**

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### Agriculture, Trade & Consumer Protection (2)

1. Rules adopted revising **ch. ATCP 136**, relating to mobile air conditioners; reclaiming or recycling refrigerant.

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers s. 100.45, Stats. DATCP has adopted rules under ch. ATCP 136 to implement s. 100.45, Stats. The current rules regulate the sale and installation of mobile air conditioner refrigerants, including “substitute refrigerants” such as R 134A. Among other things, the current rules prohibit the sale of mobile air conditioner refrigerants in containers holding less than 15 lbs. of refrigerant.

(2) On June 28, 2006, the Legislature’s Joint Committee for Review of Administrative Rules (JCRAR) voted to suspend all current state rules related to the installation and sale of “substitute refrigerants” of any kind. This broad exemption will become effective on July 7, 2006 unless by that date DATCP adopts a narrower alternative exemption by emergency rule. The narrower exemption specified by JCRAR would apply only to the sale of the “substitute refrigerant” R 134A. The exemption would allow the sale of R 134A to the general public in “do-it-yourself” containers holding less than 15 lbs.

(3) DATCP is adopting this emergency rule for the sole purpose of preventing a broader JCRAR suspension of rules that currently prevent the release of mobile air conditioner refrigerant into the environment.

**Publication Date: July 12, 2006**

**Effective Date: July 12, 2006**

**Expiration Date: December 9, 2006**

**Hearing Date: August 15, 2006**

2. Rules adopted amending **s. ATCP 10.47 (2) (c) and (3) (b) 3.**, relating to minimum acreage requirements for farm-raised deer hunting preserves.

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers state laws related to farm–raised deer. DATCP currently licenses deer farms and issues certificates for deer hunting preserves, pursuant to s. 95.55, Stats., and ch. ATCP 10, Wis. Adm. Code.

(2) Current law generally prohibits deer hunting preserves smaller than 80 acres. However, 2005 Wis. Act 359 (enacted effective May 3, 2006) provides a limited “grandfather” exemption for certain white–tailed deer hunting preserves previously licensed by the Department of Natural Resources (“DNR”). Under Act 359, a white–tailed deer hunting preserve is exempt from the 80–acre minimum size requirement if, *among other things*, the acreage of the hunting preserve is “not less than the acreage subject to the deer farm license on December 31, 2002.” This rule clarifies that the “acreage subject to the deer farm license on December 31, 2002” means the *hunting* acreage subject to the deer farm license on December 31, 2002. Without this interpretation, Act 359 would have no practical effect and would be rendered a nullity.

(3) The “grandfather” exemption in Act 359 is limited to hunting preserve operators who apply by November 1, 2006. DATCP must act on applications within 90 business days. Action may affect an operator’s ability to operate during the 2006 hunting season. DATCP is adopting this rule as an emergency rule, in order to facilitate timely action on applications. DATCP could not adopt this rule by normal rulemaking procedures in time to implement Act 359.

**Publication Date:** October 9, 2006  
**Effective Date:** October 9, 2006  
**Expiration Date:** March 7, 2007  
**Hearing Date:** November 13, 2006

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### Commerce (Financial Resources for Businesses 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

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### 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  
**Extension Through:** January 3, 2007

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### Elections Board (2)

1. 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:** December 3, 2006  
**Hearing Date:** May 18, 2005

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

\*\* The legislative session ended on July 12, 2006, with no action on the bill that would have sustained the suspension action.

- Rules were adopted creating s. EIBd 3.04, relating to election day registration and the requirement to provide a driver's license number or other form of identification to register at the polls.

#### Finding of Emergency

The Elections Board finds that an emergency exists in the 2002 change in federal law that requires persons who have been issued a current and valid driver's license to list that number in completing a voter registration application or their registration may not be processed.

In 2002, Congress enacted the Help America Vote Act to address problems and issues that surfaced in the 2000 presidential election. Section 303(a)(5)(A)(i) of the Act provided that "an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes – in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number." To comply with federal law, but also to avoid disenfranchising those Wisconsin election day registrants who have been issued a current and valid Wisconsin driver's license but do not provide that number on their registration form, the Board has adopted s. EIBd 3.04, providing for the issuance of a provisional ballot to those registrants, pursuant to s. 6.97, Stats. Under that statute, the provisional ballot will be counted if the registrant provides, by any means feasible, his or her driver's license number to the clerk of the municipality in which the registrant has voted, not later than 4:00 p.m., on the day following the election.

Previously, the Board's policy had been to process the election day registration of those registrants who failed to list their driver's license number on their registration application, if they had provided, on their registration form, a Wisconsin-issued Identification Card Number or the last four digits of their Social Security Number. Whether that policy complied with federal law had been in issue. Assuring that

Wisconsin's practice complies with federal law and obtaining that assurance before election day, by the promulgation of this emergency rule, is found to be in the public interest.

**Publication Date:** July 31, 2006  
**Effective Date:** July 31, 2006  
**Expiration Date:** December 28, 2006  
**Hearing Date:** October 4, 2006

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### 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:

- 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.

- 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.

- 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  
**Hearing Date:** August 14, 15, 16 & 17, 2006  
**Extension Through:** December 4, 2006

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### Financial Institutions – Banking

Rules were adopted revising **ch. DFI—Bkg 77**, relating to pawnbrokers.

#### Finding of Emergency

The effect of 2005 Wisconsin Act 158 is that pawnbrokers licensed by the department under s. 138.09, Stats., are exempt from s. 138.10, Stats., effective October 1, 2006. Under statutory procedures, however, a permanent rule regulating these pawnbrokers is unlikely to be effective until mid–2007, leaving the public without the safeguards of the permanent rule until that time. Thus the preservation of public safety and welfare necessitates enacting the safeguards of the emergency rule until a permanent rule is in effect.

**Publication Date:** September 25, 2006  
**Effective Date:** October 1, 2006  
**Expiration Date:** February 28, 2007

## Health and Family Services (2) (Health, Chs. HFS 110—)

1. 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

2. Rules adopted creating **ch. HFS 137**, relating to prescribing forms for use by physicians, technicians and

tissue bank employees when removing organs and tissue, other than cardiovascular tissue from decedents.

### Exemption from Finding of Emergency

The legislature by 2005 Wisconsin Act 230 requires these rules to be promulgated as emergency rules and exempts the Department from making a finding of emergency or providing evidence that these rules as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare.

Plain language analysis:

The Department is required by 2005 Wisconsin Act 230 to appoint an advisory committee to assist the Department in prescribing, by rule, a form for removal of organs and a form for removal of tissue, other than cardiovascular tissue, for use by physicians, technicians, and tissue bank employees under section 157.06 (4m) (e) of the statutes, as created by Act 230. Section 157.06 (4m) (e), Stats., requires a physician who removes tissue or an organ from a decedent or a technician or tissue bank employee who removes tissue from a decedent under s. 157.06 (4m), Stats., to complete the form created by the Department and transmit the form to the coroner or medical examiner with jurisdiction over the decedent.

As required by section. 12. (1) (b) of Act 230, the Department intends to promulgate permanent rules that are substantially identical to the emergency rules.

Because these rules only prescribe forms, the Department will, as allowed under s. 227.23, Stats., promulgate these rules without adhering to the notice and public hearing requirements set forth under ch. 227, Stats. Also, as allowed under s. 227.23, Stats., the forms prescribed by the proposed rules will not be published in the Wisconsin administrative code or the Wisconsin Administrative Register, but will be listed by title and description with a statement as to how the forms may be obtained.

**Publication Date:** July 24, 2006  
**Effective Date:** August 1, 2006  
**Expiration Date:** December 29, 2006

## Insurance (2)

1. Rules adopted creating **ss. Ins 9.25 (8) and 9.27 (4)**, Wis. Adm. Code, relating to preferred provider plan applicability dates and affecting small business plan limited exemption.

### Finding of Emergency

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

The rule identifies a limited group of policies issued by licensed insurers offering preferred provider plans that do not comply with newly promulgated ch. Ins 9, Wis. Adm. Code. In compliance with the request of the Joint Committee for the Review of Administrative Rules (JCRAR), this rule must be issued as an emergency rule and permanent rule. It is not possible to complete the permanent rule process prior to the effective date of the chapter, January 1, 2007, therefore this emergency rule is necessary.

The commissioner has filed a notice of scope for drafting the permanent rule corresponding to this emergency rule and will continue with the permanent rule making process. It is intended that one rule hearing can be held to comply with both the emergency rule and permanent rule requirements.

**Publication Date:** August 31, 2006  
**Effective Date:** September 1, 2006  
**Expiration Date:** January 29, 2007

- Rules adopted revising s. Ins 6.77, relating to underinsured and uninsured motorist coverage in umbrella and commercial policies.

**Finding of Emergency**

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

These changes will modify the rule in light of the recent Supreme Court decisions, *Rebernick v American Family Mutual Ins Company*, 2006 WI 27 and *Rocker v USAA Casualty Ins Company*, 2006 WI 26. In *Rebernick*, the court held that s 632.32(4m), Stats, applies to personal umbrella policies. In *Rocker*, the court held that s. 632.32 (6) (a), Stats, applies to commercial general liability policies and commercial umbrella policies. These interpretations are inconsistent with current insurer practices and OCI’s expectation of what would be covered in these types of policies.

Compliance with this interpretation would create significant, if not impossible compliance problems for insurers. Many insurers who write umbrella coverage do not write and are not even licensed to write automobile coverage. A second, difficult issue is that the limits for umbrella coverages are generally very high, \$1,000,000. It is unclear how an umbrella policy would reconcile these limits with the underlying auto policy and underinsured motorist coverage. For this reason, OCI had previously by rule exempted umbrella policies from the similar requirements of the uninsured motorist coverages in s. 632.32, Stats. For similar reasons, the same revision is being made for commercial liability policies.

**Publication Date:** September 29, 2006  
**Effective Date:** September 29, 2006  
**Expiration Date:** February 26, 2007

**Natural Resources (2)**  
**(Fish, Game, etc., Chs. NR 1—)**

- 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  
**Extension Through:** October 27, 2006

- Rules adopted revising ch. NR 10, relating to the 2006 migratory game bird seasons.

**Finding of Emergency**

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

**Publication Date:** August 31, 2006  
**Effective Date:** August 31, 2006  
**Expiration Date:** January 28, 2007  
**Hearing Date:** October 11, 2006

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

- 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  
**Extension Through:** December 2, 2006

### Natural Resources (Environmental Protection – Hazardous Waste, Chs. NR 600—)

Rules adopted revising **chs. NR 660 to 665**, relating to hazardous waste management.

#### Exemption from 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:

In 2001, EPA proposed regulations to change the hazardous waste manifest requirements under the federal Resource Conservation and Recovery Act (RCRA) to eliminate all state-specific manifest requirements and to require electronic submittal of the manifests. The EPA's final rule was published March 4, 2005, with correcting amendments published on June 16, 2005, and the effective date is September 5, 2006. The new regulations require the use of standardized manifest forms in all states and require certification from EPA in order to print the manifest forms. (Final action on the e-manifest was postponed.) Unlike most RCRA rules, this federal regulation will take effect, nation-wide, on the effective date. The new federal requirements will apply in all states, including Wisconsin, but will not override or supersede Wisconsin's state-specific hazardous waste manifest requirements. Accordingly, the potential exists for conflicting or additional state manifest requirements to exist beginning on that date, and the advantages of a single, uniform nationwide rule will be lost.

The normal administrative rulemaking process cannot be completed in time to conform Wisconsin's hazardous waste manifest requirements to the new EPA manifest regulations by their September 5, 2006 effective date. However, failure to adopt the new federal requirements as state rules by this date may cause legal uncertainty and potential confusion among hazardous waste generators, transporters and treatment, storage and disposal facility operators, as well as state regulatory program staff. This could interfere with interstate commerce and the orderly functioning of government, imposing unnecessary regulatory costs on Wisconsin individuals and businesses and out-of-state companies doing business in Wisconsin, to the detriment of the public welfare. More importantly, the potential confusion caused by different state and federal manifest requirements could lead to improper transportation and management of hazardous wastes, resulting in a threat to public health or safety and the environment.

**Publication Date:** September 2, 2006  
**Effective Date:** September 5, 2006  
**Expiration Date:** February 2, 2007  
**Hearing Date:** September 26, 2006

### Optometry Examining Board

A rule Was adopted creating **ch. Opt 8**, relating to continuing education.

#### Exemption from finding of emergency

2005 Wisconsin Act 297 section 58 states in part:

“(3) Continuing education rules. (b) ...Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the optometry examining board is not required to provide evidence that promulgating a rule under this paragraph 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 paragraph.”

#### Plain language analysis

Chapter Opt 8 is being created to incorporate the continuing education requirements that optometrists must complete in order to renew their registrations. As a result of the changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, all optometrist will now be required to complete 30 hours of continuing education. Previously, only optometrists who were certified to use diagnostic pharmaceutical agents (DPA) and therapeutic pharmaceutical agents (TPA) were required to complete continuing education course work.

**Publication Date:** November 8, 2006  
**Effective Date:** November 8, 2006  
**Expiration Date:** April 7, 2007  
**Hearing Date:** December 7, 2006  
 [See Notice this Register]

### Regulation and Licensing

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

#### Plain language analysis

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

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

#### Exemption from finding of emergency

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

**Publication Date:** April 15, 2006  
**Effective Date:** April 15, 2006  
**Expiration Date:** September 12, 2006  
**Hearing Date:** June 27, 2006  
**Extension Through:** January 9, 2007

## Transportation (2)

1. 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:** See section 8 (2) of 2005 Wis. Act 89

**Hearing Date:** August 8, 2006

2. Rules adopted revising **ch. Trans 276**, relating to allowing the operation of certain 2–vehicle combinations on certain highways without a permit.

### Exemption from finding of emergency

The Legislature, by Section 7 of 2005 Wis. Act 363, provides an exemption from a finding of emergency for the adoption of the rule.

### Plain language analysis

Section 348.07 (1), Stats., historically has limited vehicle lengths on Wisconsin highways to 65 feet. Section 348.07(2), Stats., allowed vehicles meeting the specifications of that subsection to operate without permits despite exceeding the 65–foot limit of subsection (1).

2005 Wis. Act 363 amended s. 348.07, Stats., and essentially made 75 feet the default permitted length on the state trunk highway system. Wisconsin’s old default 65–foot overall length limit still applies on all local roads but only applies to state trunk highways that are designated as 65–foot restricted routes by the Department. This emergency rule making establishes a preliminary list of such “65–foot restricted routes.”

Prior to Act 363, s. 348.07 (4), Stats., permitted the Department to designate “long truck routes” upon which no overall length limits apply. The Department designates the state’s long truck routes in s. Trans 276.07. This rule making does not affect those longstanding designations.

The new “default” 75–foot overall length limit applies on state highways that are neither designated as 65–foot restricted routes under this rule making nor long truck routes under s. Trans 276.07.

Definitions have been added to the rule to make it easier to identify the nature of designations made by the Department in Ch. Trans 276.

In drafting this rule the Department noticed several items that it believes may be of special interest to the legislature and which, in the Department’s view, deserve special legislative attention. First, Act 363 did not grant any authority for 75–foot vehicles using the new 75–foot routes to leave those routes to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly facilities or points of loading or unloading. The Department does not believe this oversight was intentional and, on an emergency basis, has designated the intersection of each 75–foot route and any other highway as a long truck route under its authority in s. 348.07 (4), Stats. This will permit trucks to exceed the 65–foot default length limit on local roads to access such facilities and make deliveries. The Department encourages the legislature to consider statutorily establishing access rights for vehicles using 75–foot restricted routes.

The second consequence of Act 363 the Department has discovered in drafting this emergency rule is that one statute that formerly restricted double–bottom tractor–trailer combinations to the state’s long–truck network was repealed by the deletion of the reference to s. 348.07 (2) (gm), Stats., by the Act’s amendment of s. 348.07 (4), Stats. Under the amended statute, as revised by Act 363, it might appear to a reader that double bottom trucks of unlimited length may operate upon any highway in the state, including local roads and streets, without permits. Section 348.08 (1) (e), Stats., however, continues to provide that double–bottom trucks be restricted to highways designated by the department under s. 348.07 (4). WisDOT believes this provision continues to limit double–bottom operation to long truck routes designated by the Department under s. 348.07 (4), Stats. WisDOT would suggest the deleted reference to (2) (gm) in 348.07 (4), Stats., be re–inserted into the statute to avoid confusion.

Finally, the Department notes that s. 348.07, Stats., is becoming difficult to decipher from a legal standpoint because of the many amendments that have been made to it over the years. It may be that recodifying the statute for the purpose of clarification of the length limitations of Wisconsin law would be helpful to truck and long vehicle operators in this state.

**Publication Date:** September 15, 2006

**Effective Date:** September 15, 2006

**Expiration Date:** See section 7 (2) of 2005 Wis. Act 363

**Hearing Date:** October 4, 2006

## Workforce Development

Rules adopted amending **s. DWD 59.07 (2) (d) 2.**, relating to grants supporting community child care initiatives.

### Exemption from 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:

Under the Grants Supporting Community Child Care Initiatives program, the Department distributes federal Child Care Development Funds to local governments and tribes. The funding period for the grants is the federal fiscal year of October 1 to September 30. The Department cannot release the 2006–2007 grants scheduled to begin October 1 until the change in this emergency rule is effective. These grants will

provide \$2.5 million of federal funds to support activities such as accommodation of children with disabilities, education of providers, and staff retention strategies.

The change in this rule and other changes to Chapter DWD 59 are included in a proposed permanent rule that is expected to be effective by the end of the year.

**Publication Date:** October 2, 2006  
**Effective Date:** October 2, 2006  
**Expiration Date:** March 1, 2007  
**Hearing Date:** October 26, 2006

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## Scope statements

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### Natural Resources

#### Subject

*Objective of the rule.* The objective of the proposed order is to specify emergencies on department owned lands over which the chief state forester shall have management authority as required by the legislature in WI Act 166, section 23.114. Emergencies described shall include but are not limited to, invasive species or pest infestation, disease and damage to timber from fire, snow, hail, ice or wind. This rule will provide additional authority of the chief state forester to manage emergencies on department owned forest land. The rule will specify the procedure the chief state forester will take in making the decision to act in response to an emergency including considering advice from other state agencies and identified affected or involved parties. This procedure may be similar to that described in s. NR 30.06 (4), Wis. administrative code dealing with emergency fire restrictions. The rule will also describe the procedure for notifying the public of the emergency situation, what actions will be taken as a result, and when the state of emergency is lifted similar to the procedure described in s. NR 30.06 (3) (a), Wis. administrative code.

#### Policy Analysis

The legislature requires the department to define emergencies on department forest lands over which the chief state forester would have management authority. This rule could provide additional authority to the chief state forester to properly respond to forest health emergencies. For example, we are now faced with the threat of invasion by the emerald ash borer, a foreign pest which kills all ash trees it attacks. The only treatment currently available to eradicate pioneering colonies of the borer is to cut down and destroy all infested ash as well as all ash within a ½ mile which are potentially infested though may not show any signs of infestation. This appropriate response might be hindered by s. 26.30 (2), Stats., prohibiting the department from using silvicultural methods, such as the selective cutting described here, to control forest pests. The proposed rule would allow an exception to use silvicultural methods only on department managed forest lands. This proposed rule would also allow the chief state forester to take actions in response to emergencies that might be at odds with the master plan for a property. For example, early harvest of a stand badly damaged by a tornado.

#### Comparison with federal regulations

The drafter is not aware of any existing or proposed federal regulations that are similar to this proposed rule.

#### Entities affected by the rule

Businesses and individuals that harvest wood from, as well as users of, state lands could be affected either positively or negatively depending on the circumstances and response to the emergency. The complexity of the potential impacts makes developing a procedure to involve the input from affected or involved parties an important component of this rule.

#### Statutory authority

This rule is being developed in response to a requirement of the legislature in WI Act 166, section 23.114.

#### Staff time required

We estimate it will take 30 hours of staff time to develop the proposed rule before any public review and 40 hours for public review hearings afterwards to finalize the rule text.

### Natural Resources

#### Subject

*Objective of the rule.* Authorization to begin drafting rules pertaining to free issuance of certificate of numbers per 2005 Wisconsin Act 481 and to clarify definitions in s. NR 5.001.

#### Policy Analysis

2005 Wisconsin Act 481 which was passed into law requires the department to issue free certificate of numbers to boats in the state used for advertisement for a period not to exceed 15 days.

This will require development of a procedure to do that.

This will only impact people involved in the making of those advertisements.

Wisconsin Administrative code ch. NR 5 provides definitions clarifying certain points which are in code and statute. We wish to clarify the definition of safe carrying capacity as it relates to capacity plates in boats.

#### Statutory authority

s. 30.52 (3g) (b), statutes for certificate of numbers.

s. 227.11 (s) (a), statutes for capacity plates.

#### Staff time required

10 hours.

#### Comparison with federal regulations

There is a federal regulation pertaining to capacity plates. The requested change does not affect the regulation in federal code nor will the federal code affect the requested change.

#### Entities affected by the rule

NMMA.

### Natural Resources

#### Subject

*Objective of the rule.* Authorization to begin drafting new rules created within s. NR 19.50 to establish fees for internet based ATV and snowmobile safety certification programs and to go to hearing with new rules.

#### Policy Analysis

State statute 23.33 (5) (b) 1. mandates that no person who is at least 12 years of age and who is born on or after January 1, 1988, may operate an all-terrain vehicle unless he or she holds a valid safety certificate. State statute 350.05 (2) (a) mandates that no person who is at least 12 years of age and

who is born on or after January 1, 1985, may operate a snowmobile unless he or she holds a valid snowmobile safety certificate.

Currently in Wisconsin, a valid ATV safety certificate may be obtained by completing a classroom course only. A snowmobile safety certificate may be obtained by completing a classroom course or CD ROM course which is mailed by the Department upon request and completed by the student on their own.

A common complaint received by the Department is availability, convenience and frequency of safety courses; especially ATV safety courses. Internet based course would alleviate this problem and make it more convenient for out-of-state tourists, especially Illinois which does not have an ATV safety program. The Internet course for Snowmobile Safety would consist of taking the current CD ROM course and placing it on the internet, thereby reducing workload and costs to the Department. A Memorandum of Understanding would need to be established with the internet course provider establishing a fee for the course.

#### **Statutory authority**

s. 23.33 (5) (d), s. 350.055.

#### **Staff time required**

40 hours.

#### **Comparison with federal regulations**

N/A

#### **Entities affected by the rule**

Snowmobile and ATV Safety Instructors, Assoc. of WI Snowmobile Clubs and the WI ATV Assoc.

### **Natural Resources**

#### **Subject**

*Objective of the rule.* Authorization to begin drafting rules pertaining to mandatory education law for boaters required by Wisconsin Act 356 dealing with rentals. Modification to Wisconsin Administrative code s. NR 5.18 language to provide more opportunity to take a boating safety course through the internet or boat rental business.

#### **Policy Analysis**

2005 Wisconsin Act 356 which was passed into law requires the department to establish procedures for implementing the new state statute as it relates to renters of boats who have not been certified in boating education previously.

This will require development of a course which will meet the needs of the public renting boats and the rental agents. This will only impact renters of boats who do not have an approved Boating Safety Certificate.

Wisconsin Administrative code s. NR 5.18 establishes fees to be charged and collected by WI DNR certified Boating Safety Instructors and entities which we have a MOU with. We are proposing modification of administrative rule language, to provide more opportunity to take a boating safety course through the internet or boat rental business.

#### **Statutory authority**

s. 30.74 (1) (am) a (1) (a), 30.74 (1) (b).

#### **Staff time required**

40 hours.

#### **Comparison with federal regulations**

Not Applicable.

#### **Entities affected by the rule**

Entities that will be affected by the rule include boat rental businesses, United States Coast Guard Auxiliary, United States Power Squadron, and Boating Safety Instructors.

### **Natural Resources**

#### **Subject**

*Objective of the rule.* The definition of a lifeboat will be addressed in s. NR 5.001 and shall eliminate confusion for the public regarding their responsibility to register their rubber rafts and dingys if used for anything other than transporting passengers from a vessel in distress. This will make the state law consistent with the Federal Boat Safety Act.

#### **Policy Analysis**

Many large motorboats and sailboats carry rubber rafts or dingys on board for the purpose of transportation between shore and the boat or between boats. When equipped with motors, these rubber rafts or dingys should be registered as motorboats as they are being used for transportation on water.

The rule will still exempt lifeboats from registration when they are being used exclusively for transporting passengers and material from vessels in distress.

#### **Statutory authority**

s. 227.11 (2) (a).

#### **Staff time required**

1 hour.

#### **Comparison with federal regulations**

This rule would mirror CFR 33 with the use of lifeboats and being exempted for registration.

#### **Entities affected by the rule**

All Wisconsin boat owners could be affected by the rule.

### **Natural Resources**

#### **Subject**

*Objective of the rule.* The Bureau of Wildlife Management recommends promulgating administrative rules that modify sections of chapters NR 10 and 12. These hunting, trapping, and wildlife nuisance related rule changes are minor and non-controversial in nature. The intent of these rule changes is to provide clarification to existing rules and update administrative code language and references. Specifically, these rules will define disabled person as one holding a Class A, B, or C Disability Permit, establish the non-resident raccoon trapping season dates, add deer management unit 1M to fisher zone A, clarify that open and closed hunting seasons do not pertain to nuisance wildlife removal permits, correct cross-references and clarify language resulting from the 2006 deer rule changes.

#### **Policy Analysis**

There are no significant policy issues associated with this rule package. Every year the department promulgates a rule order that contains changes that are considered to be minor and non-controversial. This package known as the annual housekeeping order helps to correct inaccuracies and clarify existing regulations.

#### **Statutory authority**

SS. 29.014, 29.184 (5), 29.361, and 29.885, Stats.

**Staff time required**

154 hours.

**Entities affected by the rule**

Groups likely interested in the outcome of these rule changes include deer hunters, bear hunters and trappers. However, because of the corrective and non–controversial nature of these changes no groups will be significantly impacted.

**Comparison with federal regulations**

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the revisions established in the Federal Code of Regulations.

**Natural Resources****Subject**

*Objective of the rule.* The Bureau of Wildlife Management recommends promulgating administrative rules modifying chapters NR 10, 11, 16, 19, and 45 relating to hunting, trapping, and use of public lands.

**Policy Analysis**

These rule changes are proposed for inclusion on the 2007 Spring Hearing questionnaire. Specifically, these rules would close the jackrabbit season, modify gun deer hunting at two State Parks and the Apostle Islands, modify bear zone A1 to be a stand alone zone, combine turkey management zones, add two Wildlife Management Areas to the 2:00 PM closure for pheasant hunting, and modify closed areas within the Upper Mississippi Fish and Wildlife Refuge. In addition, this rule proposal would modify hunting methods such as fall turkey hunting with dogs, using blinds on state land, and trap sizes and requirements. Finally, this rule proposal sets a specific Trapper Education class fee, and modifies deer feeding restrictions.

These changes do not deviate from existing board policy. The proposed changes to hunting seasons, hunting and trapping equipment and methods, and use of public lands are consistent with previous board actions and policies.

**Statutory authority**

SS. 23.09 (2), 23.091, 29.014, 29.041, 29.089 (3), 29.335, 29.512, 29.597, and 169.18 Stats.

**Staff time required**

606 hours.

**Entities affected by the rule**

Deer, bear, turkey, and waterfowl hunters, trappers, landowners, non–hunting outdoor enthusiasts, and state park users will all be affected by these rules.

**Comparison with federal regulations**

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

**Natural Resources****Subject**

*Objective of the rule.* Modifications to portions of ch. NR 20, pertaining to fishing regulations on inland waters, and ch. NR 21, pertaining to Wisconsin–Minnesota boundary waters.

**Policy Analysis**

The Department is beginning the process of recommending changes to Wisconsin administrative code relating to recreational fishing regulations. The Department anticipates requesting hearings on these changes in January, 2007, and holding approved hearings in April 2007.

**Statutory authority**

ss. 29.014 and 29.041, Stats.

**Staff time required**

The Department anticipates spending approximately 275 hours in the rule development process.

**Comparison with federal regulations**

Authority to promulgate fishing regulations is granted to States. No federal regulations apply to the proposed changes in regulating recreational fishing activity.

**Natural Resources****Subject**

*Objective of the rule.* Requesting NRB authorization to bring to public hearing changes to ch. NR 10, regarding gun deer seasons.

**Policy Analysis**

Significant changes have been implemented toward gun deer seasons beginning in 2006; including the trial elimination of the October antlerless gun season and creation of a trial statewide December antlerless gun season. This rule proposal will address the future of the December and October antlerless gun deer seasons pending conclusive information collected during the 2006 deer seasons. In addition, this rule proposal clarifies deer harvest and tagging options for youth deer hunters during the special youth deer hunt event, and creates a free antlerless carcass tag for current year graduates of hunter education.

**Statutory authority**

s. 29.014, Stats.

**Staff time required**

94 hours.

**Entities affected by the rule**

All deer hunting stakeholder groups and others, such as the Association of Wisconsin Snowmobile Clubs, Wisconsin Farm Bureau, and forestry interest groups will be interested in the changes proposed in this rule.

**Comparison with federal regulations**

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

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## Submittal of rules to legislative council clearinghouse

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

### **Commerce**

On October 17, 2006, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed rule–making order relates to the woman–owned business certification program.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on November 27, 2006.

#### **Contact Person**

Sam Rockweiler  
(608) 266–0797  
srockweiler@commerce.state.wi.us

### **Optometry Examining Board**

On October 30, 2006, the Optometry Examining Board

submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### **Analysis**

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 449.06 (2m), Stats., as created by 2005 Wisconsin Act 297.

The proposed rule–making order relates to examinations, endorsement, delegation, TPA/DPA, renewal and continuing education relating to optometrists.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on December 7, 2006 at 9:15 a.m. in Room 121C at 1400 East Washington Avenue, Madison, Wisconsin.

#### **Contact Person**

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

Pamela.haack@drl.state.wi.us

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## Rule–making notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

*(reprinted from October 31, 2006 Register)*

The Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on an emergency rule relating to the minimum acreage for farm–raised deer hunting preserves. This emergency rule preserves the intent of Act 359 to “grandfather” certain pre–existing hunting preserves that would otherwise fail to meet recently–enacted minimum acreage requirements under s. 95.55 (5) (a), Stats. This emergency rule affects a small number of previously licensed white–tailed deer hunting preserves.

DATCP will hold one hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until **November 20, 2006**, for additional written comments. Comments may be sent to the Division of Animal Health at the address below or by e–mail to: [hearingcommentsAH@datcp.state.wi.us](mailto:hearingcommentsAH@datcp.state.wi.us).

#### 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 Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4886 or emailing [Richard.bourie@datcp.state.wi.us](mailto:Richard.bourie@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>

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](mailto:Keeley.Moll@datcp.state.wi.us) or by telephone at (608) 224–5039.

#### Hearing Date and Location

**Monday, November 13, 2006**

1:00 p.m. to 2:00 p.m.

Department of Agriculture, Trade and Consumer Protection  
2811 Agriculture Drive, Board Room  
Madison, WI 53708

Handicapped accessible

Hearing impaired persons may request an interpreter for the hearing. Please make reservations for a hearing interpreter by Wednesday, November 8, 2006, by writing to Dr. Richard Bourie, Division of Animal Health, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4886. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearing.

#### Analysis prepared by the Dept. of Agriculture, Trade and Consumer Protection

This emergency rule interprets and clarifies 2005 Wis. Act. 359, related to minimum acreage requirements for farm–raised deer hunting preserves. This emergency rule preserves the intent of Act 359 to “grandfather” certain pre–existing hunting preserves that would otherwise fail to meet recently–enacted minimum acreage requirements under s. 95.55 (5) (a), Stats. This emergency rule affects a small

number of previously licensed white–tailed deer hunting preserves.

Statutory Authority: ss. 93.07 (1), and 95.55 (6), Stats.

Statute Interpreted: s. 95.55, Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has broad general authority to adopt rules interpreting statutes under its jurisdiction (*see* s. 93.07 (1), Stats.). DATCP is specifically authorized to adopt rules to regulate both the raising of farm–raised deer and the hunting of farm–raised deer in this state (*see* s. 95.55 (6), Stats.). This emergency rule clarifies the minimum acreage required for certain white–tailed deer hunting preserves.

#### Background and Purpose

DATCP administers Wisconsin’s animal health and disease control programs, including programs to license and regulate keepers of farm–raised deer. Under s. 95.55, Stats., and DATCP rules, no person may operate a farm–raised deer hunting preserve without a deer farm license and hunting preserve certificate from DATCP. A deer farm license must be renewed every year. A hunting preserve certificate is good for 10 years, unless suspended or revoked.

Section 95.55 (5), Stats. (enacted by 2003 Wis. Act 145 effective January 1, 2003) generally prohibits hunting preserves that are smaller than 80 acres. However, 2005 Wis. Act 359 (enacted effective May 3, 2006) creates a limited “grandfather” exemption for certain white–tailed deer hunting preserves previously licensed by the Department of Natural Resources (DNR). Regulation of white–tail deer farms and hunting preserves was transferred from DNR to DATCP effective January 1, 2003.

Under the “grandfather” exemption created by 2005 Wis. Act 359, DATCP may permit a white–tail deer hunting preserve smaller than 80 acres if the hunting preserve meets several specific requirements. One of the requirements is that the hunting preserve acreage must be “not less than the acreage subject to the DNR deer farm license on December 31, 2002.”

The apparent intent of the legislation was to “grandfather” certain white–tailed deer hunting preserves that are currently no smaller than they were when previously licensed by DNR. However, DNR license documents from 2002 refer only to the *total* acreage of the licensed deer farm (including hunting *and non–hunting* acreage), and do not separately identify hunting vs. non–hunting acreage. Under one possible reading of the legislation, a hunting preserve is “grandfathered” only if the current hunting acreage is not less than the total hunting *and non–hunting* acreage licensed by DNR in 2002, even though the hunting acreage itself is no smaller than in 2002. However, such a reading would render the legislation a nullity.

This emergency rule interprets 2005 Wis. Act 359 to preserve the apparent intent of the legislation, and to avoid rendering the legislation null. Under this emergency rule, a white–tailed deer hunting preserve may qualify for “grandfather” status if, among other things, the operator can document that the current *hunting acreage* is no less than the *hunting acreage* on the same deer farm licensed by DNR in 2002.

DATCP is adopting this emergency rule to clarify hunting preserve criteria in time for the 2006 hunting season, and within the time period contemplated by 2005 Wis. Act 359.

Hunting preserve operators who wish to claim the “grandfather” exemption must apply by November 1, 2006, and DATCP must act on each application within 90 days. DATCP could not adopt this rule by normal rulemaking procedures in time to implement Act 359.

### Federal Programs

DATCP administers animal disease control programs in cooperation with the United States department of agriculture (USDA). DATCP cooperates with USDA in the administration of programs related to chronic wasting disease and other diseases of farm–raised deer. USDA does not itself regulate deer hunting preserves, as such.

### Surrounding State Programs

Cervid (white–tailed deer) hunting preserves are allowed in surrounding states.

Minnesota law does not specifically permit or prohibit white–tailed deer hunting preserves. Currently some deer farms hold hunts, and there is no minimum acreage required. Although proposed, no legislative action has been taken to clarify the law in the last three legislative sessions.

Iowa originally issued licenses to game farms for the hunting of game birds and /or white–tailed deer. The minimum acreage was 320 acres. Iowa now requires separate licenses for hunting game birds and hunting white–tailed deer. Each hunting area is now required to have a minimum of 320 acres. Some farms could not meet the 320–acre–each requirement when the law changed, so Iowa did allow game farms that formerly hunted both types of game to receive both licenses under a “grandfathering provision”, even though neither hunting area is 320 acres. The grandfathering provision opportunity has expired.

Illinois allows hunting of non–indigenous species on game hunting areas of 640 to 2560 contiguous acres. White–tailed deer are native to Illinois and may not be hunted under this license. However, there is no direct prohibition on hunting white–tailed deer. Illinois issues permits for deer breeding farms, with no minimum acreage requirement. Two breeding farms began offering hunts for white–tailed deer 10–15 years ago (a hunter buys a deer and then shoots it). No legislative action has been taken to address the issue of hunts on breeding farms.

Michigan issues licenses to 4 classes of deer farms, dependent mostly on the size of the farm. Hunting of white–tailed deer is allowed on all classes, with no minimum acreage requirement.

### Fiscal Impact

This rule will have no fiscal impact on local government and an insignificant impact on DATCP. DATCP will incur added staff and administrative costs to administer the new farm–raised deer hunting preserve certification for less than 80 acres, but expects to absorb the additional workload with existing staff and appropriations. There is a \$150 inspection fee to get a hunting preserve certificate. That fee applies to all applications, regardless of acreage.

### Small Business Impact

This rule affects a very small number of white–tailed deer hunting preserve operators, all of whom are “small businesses.” This rule will have a positive impact on those operators. Current statutes and rules generally prohibit hunting preserves smaller than 80 acres. This rule effectively implements 2005 Wis. Act 359, which provides a possible “grandfather” exemption for a few operators. This rule does not impose any additional restrictions or burdens on small business.

### DATCP Contact Person

Questions and comments related to this rule may be directed to:

Dr. Richard Bourie  
Department of Agriculture, trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708–8911  
Telephone (608) 224–4886  
E–Mail: hearingcommentsAH@datcp.state.wi.us

### Notice of Hearing Commerce

#### (Financial Assistance for Businesses and Communities)

[CR 06–113]

NOTICE IS HEREBY GIVEN that pursuant to s. 560.035 (1) (c), Stats., the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 104, relating to implementing a woman–owned business certification program.

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
<b>Monday November 27, 2006</b>	Thompson Commerce Center
Commencing at	Third Floor, Room 3B
10:00 A.M.	201 West Washington Avenue Madison, Wisconsin

### Written comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until November 30, 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. All written comments should be submitted by e–mail to srockweiler@commerce.state.wi.us. If e–mail submittal is not possible, written comments may be mailed 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.

### Rule Summary

Statutes Interpreted: Sections 560.035 (1) and 227.51  
Statutory Authority: Section 560.035 (1) (c)

### Explanation of Agency Authority

Section 560.035 (1) (c), Stats., as created by 2005 Wisconsin Act 358, requires the Department to promulgate rules for implementing a woman–owned business certification program under s. 560.035 (1), Stats.

### Related Statute or Rule

Chapter Comm 105 contains the requirements for the Department’s Minority Business Certification Program.

Although that program does not recognize women as minorities, many of the best practices which the Department has developed in that program are extrapolative to a program for certifying woman–owned businesses.

#### Plain Language Analysis

The proposed rules primarily specify (1) which businesses are eligible for becoming certified in this program, (2) how to apply for certification and recertification, (3) how the certifications will be issued, renewed, and rescinded, and (4) how to appeal a decision by the Department. Parameters are also included for recognizing equivalent certifications that are issued by other public agencies; and for utilizing an advisory committee in decision–making for certification, decertification, recertification, and subsequent rule development.

#### Summary and Comparison of Federal Regulations

Title 49 of the *Code of Federal Regulations*, Part 26, Subpart D, addresses certification standards for disadvantaged business enterprises that participate in federal Department of Transportation (DOT) financial assistance programs. Those enterprises include businesses that are substantially owned by women having a personal net worth which does not exceed \$750,000. Subpart E addresses the certification procedures, which include determination and issuance of the credential by corresponding State–level or multi–State Unified Certification Programs. The certification criteria in Subparts D and E are similar to the rules proposed in chapter Comm 104, in addressing the application process; documentation of majority ownership and control; acceptance of certifications by the U.S. Small Business Administration; issuance or denial of the credential; appeals; notification duty if application information changes materially; recertification; and ineligibility of not–for–profit organizations.

Title 13 of the *Code of Federal Regulations*, Part 124, Subpart B, addresses the U.S. Small Business Administration’s certification of small disadvantaged businesses, for participation in federal procurements aimed at overcoming the effects of discrimination. Some woman–owned businesses in Wisconsin are expected to be eligible for this certification. The certification criteria in Subpart B are similar to the rules proposed in Comm 104, in addressing the application process; documentation of ownership and control; issuance or denial of the credential; reconsideration; certification by other certifying entities, including the federal DOT; decertification; appeals; and recertification.

Wisconsin’s statutory parameters for certifying woman–owned businesses, and the rules proposed in Comm 104, do not specify a maximum business size or maximum net worth, beyond which women owners are ineligible for certification. The rules proposed in Comm 104 also differ from the federal criteria by not accepting certifications from private–sector entities.

#### Comparison With Rules in Adjacent States

An Internet–based search of State–level rules in Minnesota, Iowa, Illinois, and Michigan revealed the following information relating to certification of woman– or female–owned businesses.

*Minnesota.* Minnesota offers a targeted–group procurement program to help remedy the effects of past discrimination against members of targeted groups. To be considered under the program, a business must be designated as a targeted business by the Minnesota Commissioner of Administration. As directed by section 16C.19 of the Minnesota Statutes, the criteria for these designations are promulgated as rules and are included in Minnesota Rules,

Chapter 1230. This chapter addresses certification of small, targeted–group businesses that are at least 51 percent owned and operationally controlled on a day–to–day basis by either women or other socially disadvantaged persons. This chapter is also similar to the rules proposed in Comm 104 in addressing the application process; documentation of majority ownership and control; issuance or denial of the credential; input from an advisory committee; and use of a statutory, contested–case hearing process for appeals.

*Iowa.* Chapter 54 of the rules of the Iowa Department of Economic Development establishes a targeted small business procurement program for promoting the growth, development and diversification of Iowa businesses that are owned by minorities or women. Chapter 55 of the rules of that Department establishes a targeted small business financial assistance program to assist women, minorities, persons with disabilities, and low–income individuals in establishing or expanding small business ventures in Iowa. Prior to participation in either of these two programs, a business must be certified as a targeted small business, in accordance with Chapter 25 of the rules of the Iowa Department of Inspections and Appeals. Under the definitions in that Chapter, a targeted small business (1) is 51 percent or more owned, operated, and actively managed by minorities, women, or persons with disabilities; (2) has an annual gross income of less than \$3 million; and (3) is operated for profit. The certification rules in the Chapter are similar to the rules proposed in Comm 104, in addressing the application process; documentation of majority ownership and control; issuance or denial of the credential; consideration of certification by another agency; decertification; recertification; and use of a statutory, contested–case hearing process for appeals. The rules proposed in Comm 104 differ by not limiting annual sales to \$3 million.

*Illinois.* Title 44, Part 10 of the Illinois Administrative Code implements the Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575]. This Act establishes a goal that at least 12 percent of contracts awarded by State agencies subject to the Act be awarded to businesses which are owned and controlled by minorities, females, or persons with disabilities. Of that 12 percent, 5 percent must be female–owned businesses; and these businesses cannot have annual gross sales of \$27 million or more, including sales from any affiliates. The Act also authorizes development and use of a procedure to certify firms eligible for the benefits of the Act; allows for certain special treatment in contracting with certified businesses; and establishes a Council, Secretary, and, in the Department of Central Management Services, a program function to implement and oversee the Act. Section 10.30 of Part 10, Title 44, addresses the roles of the State agencies and the Council in achieving compliance with the contract–awarding goals. Under Section 10.50, only certified businesses are eligible for the benefits of the Business Enterprise program, and State agencies can count only those expenditures with a certified vendor, or subcontractor, toward meeting the contract–awarding goals. The certification rules in Sections 10.50 to 10.72 are similar to the rules proposed in Comm 104, in addressing the application process; documentation of majority ownership and control; issuance or denial of the credential; consideration of certification by another entity; input from an advisory committee; reconsideration; decertification; appeals; and recertification. The rules proposed in ch. Comm 104 differ by not limiting annual sales to \$27 million, and by not accepting certifications from private–sector entities.

Several other rules in other portions of the Illinois Administrative Code require or encourage targeting of

various opportunities to women–owned businesses, but do not link this targeting to certification.

*Michigan.* No information was found relating to certification of women– or female–owned businesses.

**Summary of Factual Data and Analytical Methodologies**

The data and methodology for developing these proposed rules were derived from and consisted of incorporating the criteria in s. 560.035 (1), Stats.; incorporating many of the best practices the Department has developed in its current, similar program for certifying minority–owned businesses; soliciting and utilizing input from representatives of the stakeholders who are expected to participate in this program; and reviewing Internet–based sources of related federal, state, and private–sector information.

**Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report**

The primary document that was used to determine the effect of the proposed rules on small business was 2005 Wisconsin Act 358. This Act requires the Department to implement a program for certifying woman–owned businesses, and requires the Department to promulgate rules for administering the program. However, this Act does not require these businesses to become certified, and does not create preferences in governmental procurement for these businesses. Consequently, the proposed rules do not require this certification, and do not create procurement preferences.

**Effect on Small Business**

The proposed rules are not expected to impose a negative effect on small business, because the rules only address applying for, receiving, and maintaining voluntary credentials. This rule does have the potential to enable woman–owned businesses to benefit from additional business opportunities. In recognizing this positive impact, the Department took steps to reduce possible barriers for woman–owned, small businesses as defined in s. 227.114 (1), Stats., by requesting external participation in the draft rule development. The Department organized and solicited the comments from organizations that represent the interests of woman–owned small businesses, and from those who represented supplier–diversification programs. The rule advisory group included the following members and organizations:

- Kathy Doyle . . . . . Advocap
- Renee Walz . . . . . Western Dairyland Community Action
- Jennifer Ring Mellberg . . Wisconsin Women’s Business Initiative Corporation
- Bill Smith . . . . . National Federation of Independent Businesses
- Mary Stoltz . . . . . Madison Chapter of National Association of Women Business Owners
- Beth Nemecek . . . . . AmeriPrint Graphics, Inc
- Laurie Benson . . . . . Inacom, Inc.
- Lisa Kleiner . . . . . Wood, McNally, Maloney & Peterson, S.C.
- Jerry Fulmer . . . . . WE Energies
- Mary Trimmier . . . . . U.S. Small Business Administration
- Mildred Hyde Demoze . . . Milwaukee County Office of Community Business Development Partners

The rule–advisory group had the opportunity to review the rule drafts and provide input through two meetings held at the Department, on July 27 and August 16, 2006.

Small businesses’ access to information about the woman–owned business enterprise (WBE) certification program will determine the level of participation by the woman–owned businesses that meet the small business definition contained in section 227.114 (1). The Department plans to issue a statewide press release announcing the availability of the WBE certification, so that small businesses which are not members of associations or business–related organizations will be aware of the new WBE certification program. The Department also plans to promote the availability of the woman–owned business certification through the Department’s network of entrepreneurial business–assistance partners, numerous business affiliations and industries, and Department–sponsored events that cater to small business. A user–friendly WBE fact sheet is expected to be available through a Department WBE certification Web site, and training sessions may be offered, to assist small businesses in understanding the requirements and the application process.

**Agency Contact Information**

Ruby Brooks, Wisconsin Department of Commerce, Bureau of Minority Business Development, P.O. Box 7970, Madison, WI, 53707–7970; telephone (608) 266–8380; e–mail [rbrooks@commerce.state.wi.us](mailto:rbrooks@commerce.state.wi.us).

**Copy of Rules**

The proposed rules and an analysis of the rules are available on the Internet, by entering “Comm 104” in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Anne Thundercloud at the Department of Commerce, Bureau of Minority Business Development, P.O. Box 7970, Madison, WI 53707, or at [AThundercloud@commerce.state.wi.us](mailto:AThundercloud@commerce.state.wi.us), or at telephone (608) 267–9550 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

**Environmental Analysis**

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

**Initial Regulatory Flexibility Analysis**

1. Types of small businesses that will be affected by the rules.
  - Businesses that qualify and want to become certified as a woman–owned business.
2. Reporting, bookkeeping and other procedures required for compliance with the rules.
  - Each applicant must (1) complete and submit a Department–supplied application, (2) subsequently notify the Department of any changes to the information contained in the application, and (3) complete and submit a Department–supplied application for recertification, for continuation of the certification beyond each three–year certification period.
3. Types of professional skills necessary for compliance with the rules.

No new professional skills would be necessary for compliance with the proposed 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 by e–mail at cdunn@commerce.state.wi.us.

#### **Fiscal Estimate**

The appropriation, as created by 2005 Wisconsin Act 358, will result in revenues that will offset the Department’s costs in administering this new program.

The Department estimates that 1200 businesses will maintain the credential under this program, at an annual fee of \$50.

The proposed rules are not expected to impose any significant, mandated costs on the private sector, because the rules only address applying for, receiving and maintaining voluntary credentials.

## **Notice of Hearing Optometry Examining Board [CR 06–116]**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Optometry Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 449.06 (2m), Stats., as created by 2005 Wisconsin Act 297, and interpreting ss. 449.02, 449.04 (1), 449.055, 449.06 (1) and (2m), 449.08 (1), 449.17 (1), (1m) and (2), and 449.18 (1), (2), (5) and (6), Stats., the Optometry Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal Opt 1.02 (3), 3.01, the Note following Opt 4.02 (2), 6.02 (2) and (5), and 6.05 to 6.08; to renumber Opt 6.02 (1); to renumber and amend Opt 5.12; to amend Opt 1.01, 1.02 (intro.), 3.02 (1) (intro.), the second Note following 3.02 (1) (a), the Note following 3.02 (1) (c), 3.03, 3.09, ch. Opt 4 (title), 4.01 (intro.), (1) to (5) and (7), 4.02 (1) (intro.) and (c), 4.03 (1) and (2) (intro.), 5.12 (title), ch. Opt 6 (title), 6.01, 6.02 (6), ch. Opt 7 (title), 7.03 (title) and 7.03, and 7.05 (1) and (2) (intro.); to repeal and recreate Opt 1.02 (6), 1.03, 6.02 (3), 6.03 and 6.04; and to create Opt 4.01 (8) and (9), 5.02 (6), 5.12 (1), (2) and (3), 6.02 (1) and ch. Opt 8, relating to examinations, endorsement, delegation, TPA/DPA, renewal and continuing education relating to optometrists.

#### **Hearing Date, Time and Location**

**Date:** December 7, 2006  
**Time:** 9:15 a.m.  
**Location:** 1400 East Washington Avenue  
 (Enter at 55 N Dickinson Street)  
 Room 121C  
 Madison, Wisconsin

#### **Appearances at the Hearing**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by December 7,

2006, to be included in the record of rule–making proceedings.

#### **Analysis prepared by the Department of Regulation and Licensing**

Statutes interpreted: Sections 449.02, (3), 449.04 (1), 449.055, 449.06 (1) and (2m), 449.08 (1), 449.17 (1), (1m) and (2), and 449.18 (1), (2), (5) and (6), Stats.

Statutes authorizing promulgation: Sections 15.08 (5) (b) and 227.11 (2), Stats., and s. 449.06 (2m), Stats., as created by 2005 Wisconsin Act 297.

Explanation of agency authority: Chapter 449, Stats., and 2005 Wisconsin Act 297, give authority to the Optometry Examining Board to promulgate rules relating to the issuance and renewal of licenses; the issuance of certificates to use diagnostic and therapeutic pharmaceutical agents; the issuance of licenses by endorsement; continuing education requirements and grounds for discipline of optometrists.

Related statute or rule: Chapter RL 10 which identifies the diagnostic and therapeutic pharmaceutical agents that have been approved by the Department of Regulation and Licensing for use by optometrists.

Plain language analysis: SECTIONS 1 and 2. The current rules include a reference in ss. Opt 1.01 and 1.02 to chs. Opt 1 to 7. These sections are being amended to clarify that these provisions also apply to ch. Opt 8.

SECTION 3. In this section, the board repeals the definition of “immediate supervision.”

SECTION 4. In this section the board creates a definition of “supervision.” The board also repeals the definition of “routine visual screening” that is found in s. Opt 1.02 (6).

SECTION 5. In this section, the board repeals and recreates s. Opt 1.03, which relates to delegation and supervision of unlicensed persons. The rule clarifies that, with 2 exceptions, optometrists may direct unlicensed persons working under their supervision to perform any act that is within the scope of the practice of optometry.

SECTION 6. Section Opt 3.01, which relates to fixing a time and place for examinations, is being repealed because the examinations are now administered on–line.

SECTION 7. Section Opt 3.02 (1) is being amended to clarify that applications for examination are no longer required to be submitted 30 days prior to the date of the examination, and to make minor and technical changes to the examination procedures. These changes are required primarily because examinations are now administered on–line.

SECTIONS 8 and 9. These sections amend Notes to identify where applications may be obtained.

SECTIONS 10 and 11. These sections make minor and technical revisions to the rules that relate to application and examination procedures.

SECTIONS 12–17. These sections amend ch. Opt 4 to incorporate the provisions for endorsement that are contained in 2005 Wisconsin Act 297. Those provisions require applicants to be “in good standing;” to have practiced optometry in another state that has substantially similar requirements, and to have completed the educational course work required to use diagnostic and therapeutic pharmaceutical agents. In addition, other minor and technical revisions relating to application and examination procedures are being made to the rules.

SECTION 18. Section Opt 5.02 (6) is being created to define “signature” to mean “a handwritten mark or an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”

SECTIONS 19–21. Section Opt 5.12, which relates to supervision of unlicensed persons who perform routine vision screenings, is being repealed and recreated to state that it shall be unprofessional conduct for an optometrist to do any of the following:

(1) Delegate the prescribing of pharmaceutical agents, or the removal of foreign bodies from an eye or from an appendage to the eye, to an unlicensed person.

(2) Delegate the performance of tasks related to the practice of optometry to an unlicensed person that exceeds that person's competence, education, training or experience.

(3) Fail to exercise supervision over an unlicensed person, as provided under s. Opt 1.03.

SECTIONS 22–31. These sections amend, repeal, and repeal and recreate ch. Opt 6 to incorporate the substantial changes made by 2005 Wisconsin Act 297 relating to the use of diagnostic and therapeutic pharmaceutical agents and removal of superficial foreign bodies from an eye or from an appendage to the eye. Chapter Opt 6, as recreated, incorporates the procedures for the issuance of certificates to use diagnostic and pharmaceutical agents; the education and examination requirements that must be completed in order for an optometrist to obtain a certificate, and the permitted use of diagnostic and therapeutic pharmaceutical agents. Some of the primary changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, which are incorporated into ch. Opt 6 or clarified in ch. Opt 6, include the following:

Section 449.17 – DPA Certificates. As a result of the revisions to the statutes, the Department of Regulation and Licensing will no longer grant DPA certificates. The board is now authorized to grant DPA certificates, but only to optometrists who were licensed by the board before August 1, 2006. Optometrists licensed by the board on or after August 1, 2006, will automatically be authorized to use diagnostic pharmaceutical agents (DPA) without having to obtain a separate DPA certificate. Note that the DPA certificates granted by the department prior to August 1, 2006, will remain in effect while the optometrist's license remains in effect unless suspended or revoked by the board. [Wis. Stats. s. 449.17 (1m) (d).] Note also that the Secretary of the department retains the authority to promulgate rules specifying the topical ocular diagnostic pharmaceutical agents that may be used by optometrists. See also Wis. Adm. Code ch. RL 10.]

Section 449.18 – TPA Certificates. As a result of the revisions to the statutes, the board retains the authority to grant TPA certificates, but only to optometrists who were licensed by the board before August 1, 2006. Optometrists licensed by the board on or after August 1, 2006, will automatically be authorized to use therapeutic pharmaceutical agents (TPA) without having to obtain a separate TPA certificate. Note that the TPA certificates granted by the board prior to August 1, 2006, will remain in effect while the optometrist's license remains in effect unless suspended or revoked by the board. [Wis. Stats. s. 449.18 (2) (e).] Note also that the Secretary of the department retains the authority to promulgate rules specifying the therapeutic pharmaceutical agents that may or may not be used by optometrists. [See also Wis. Adm. Code ch. RL 10.]

Section 449.06 – Renewal; continuing education. As a result of the revisions to the statutes, all optometrists will be required to complete 30 hours of continuing education. Note also that, as stated above, DPA and TPA certificates will not expire; therefore, the certificates will not need to be renewed.

SECTION 31. This section repeals ss. Opt 6.05 to 6.08, which relate to the approval of continuing education courses

and the renewal of TPA certificates. The provisions relating to continuing education are being incorporated into ch. Opt 8. Under 2005 Wisconsin Act 297, TPA certificates no longer expire; therefore, optometrists are not required to renew them.

SECTIONS 32–34. These sections amend ss. Opt 7.03 and 7.05 to clarify that all optometrists must now complete the required continuing education course work in order to renew their registrations. Previously, only optometrists who held TPA certificates were required to complete continuing education course work.

SECTION 35. Chapter Opt 8 is being created to incorporate the continuing education requirements that optometrists must complete in order to renew their registrations. As a result of the changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, all optometrists will now be required to complete 30 hours of continuing education. Previously, only optometrists who were certified to use diagnostic pharmaceutical agents (DPA) and therapeutic pharmaceutical agents (TPA) were required to complete continuing education course work.

Section Opt 8.01 creates definitions for “biennium,” “COPE” and “hardship.”

Section Opt 8.02 identifies the course work that optometrists must complete and the procedure that they must follow in order to renew their registrations. The proposed rules require optometrists to complete 30 hours of approved continuing education in each biennial registration period. A minimum of 7 of the 30 hours must be approved glaucoma education. To obtain credit for completion of continuing education hours, optometrists must, at the time of each renewal of their registrations, sign a statement certifying that the course work has been completed. If audited, the optometrists will be required to submit their certificates of attendance issued by each course provider or other evidence of attendance satisfactory to the board. An optometrist who fails to meet the continuing education requirements by the renewal date may not engage in the practice of optometry until his or her registration is renewed under s. Opt 7.05.

Section Opt 8.03 creates the criteria for the approval of continuing education courses, which was previously contained in ch. Opt 6. In general, to apply for approval of a continuing education course, a course provider must submit to the board office an application on forms provided by the department that shall include the title, general description and an outline of the course, the dates, the location, the name and qualifications of the instructor of the course, and the sponsor of the course. The following criteria will be considered in the approval process:

(1) The subject matter of the course pertains to the practice of optometry.

(2) The provider of the continuing education courses agrees to monitor the attendance and furnish a certificate of attendance to each participant. The certificate of attendance shall certify successful completion of the course.

(3) The provider of the course is approved by the board.

(4) The course content and instructional methodologies are approved by the board.

In addition, alternate delivery method continuing education courses such as home–study courses, self–study packages, computer courses, televideo conferencing and other methods may be approved by the board. Finally, a continuing education course approved by the Council on Optometric Practitioner Education (COPE), or sponsored by a state optometric association, the American Optometric Association, the American Academy of Optometry, or an accredited school or college of optometry, which satisfies the criteria established under s. Opt 8.03 (2), shall be approved by

the board without receipt of a course approval application from the course provider.

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

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Illinois:

Illinois's administrative rules relating to the practice are found in Title 68: Professions and Occupations, Chapter VII: Department of Financial and Professional Regulation Part 1320, Optometric Practice Act of 1987. These rules may be found at:  
<http://www.ilga.gov/commission/jcar/admincode.068/06801320sections.html>

Iowa:

Iowa's administrative rules relating to the practice of optometry are found in their chapters 179 to 183. These rules may be found at:  
<http://www.idph.state.ia.us/licensure/laws.asp?board=opt>

Michigan:

Michigan's administrative rules relating to the practice of Optometry are found in their sections R. 338.211 to 338.279 (General Rules) and R 338.291 (Ethical and Unprofessional Conduct). There rules may be found at:  
[http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin\\_Num=33800251&Dpt=CH&RngHigh=and](http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33800251&Dpt=CH&RngHigh=and)  
[http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin\\_Num=33800291&Dpt=CH&RngHigh=](http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33800291&Dpt=CH&RngHigh=)

Minnesota:

Minnesota's administrative rules relating to the practice of optometry are under their Chapter 6500 and maybe found at:  
<http://www.revisor.leg.state.mn.us/arule/6500/>

Summary of factual data and analytical methodologies:

The Department of Regulation and Licensing is assisting in drafting of the board's rules as per recent amendments of ch. 449, Stats. The board's professional and public members provided their input and guidance into the rule drafting process.

The department relied on information provided by the Wisconsin Association of Optometrists (WOA) regarding their membership and projected costs of continuing education. For licensee counts, the numbers were derived from the credentialing database of the Department of Regulation and Licensing in September of 2006.

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

The proposed rules make a number of changes that may affect the practice of optometry as it relates to small business. The changes may be positive in terms of increasing flexibility in licensure requirements (licensure mobility), providing delegated authority and changing continuing education requirements.

These rules will affect those who are currently practicing under a Wisconsin license (913 active licensees in and out of state); those who may wish to renew their license (1,258 inactive licensees in and out of state), and those looking to begin practice in Wisconsin, transfer to another jurisdiction, or apply to Wisconsin through licensure by endorsement.

The following changes may affect small business:

Redefinition of Supervision: The existing rules provide for immediate supervision of staff within a clinic by a licensed optometrist. The board finds that these rules are outdated and

not relevant to the modern practice of optometry. The board is proposing to introduce flexibility into the practice of optometry by developing a rule which allows optometrists to determine the level of oversight required for the supervision of unlicensed persons.

Delegated Authority: The amendments to ch. 449, Stats., allow an optometrist to train staff to provide certain services in the clinic which were formerly restricted to licensed professionals. This amendment allows unlicensed persons to practice certain services which are considered within the scope of practice of optometry, under their supervising optometrist's license, but only after adequate training has been provided. Delegated authority may generate costs to small business by requiring formal optometric training of staff, however the decision to delegate these tasks is entirely optional.

Endorsement: The new rules provide that a licensee of another jurisdiction with substantially equivalent licensure requirements may transfer to Wisconsin. This may increase competition, however as reported by the board, many states are moving to the licensure by endorsement model which would also allow Wisconsin optometrists to transfer easier to another jurisdiction. This may have a neutral effect as it relates only to licensure mobility.

Continuing Education: Under the existing rules – now outdated due to changes in statute – the only optometrists required to take continuing education course work for licensure renewal – were those certified by the board to use therapeutic pharmaceutical agents (TPA). Recent updates to ch. 449, Stats., (practice of optometry) requires all optometrists to take continuing education course work; therefore the board is drafting rules to require 30 hours of continuing education for renewal for all optometrists' licensure.

As of September, 2006, there were a total of 2,171 Wisconsin licensed optometrists (in and out of state, active and inactive licenses). Of that number, there were 913 active license holders (in and out of state) certified to use TPA and therefore required to complete 30 hours of continuing education in a biennium.

There are 328 active license holders who currently do not hold the TPA certification, who will have to meet the new renewal requirements of 30 hours of board approved continuing education in the biennium.

As per an estimate of the Wisconsin Optometric Association\*, costs per hour of continuing education range from:

\$30 per hour of continuing education; \$15–\$20 per hour for continuing education packages – WOA membership only

\$90 per hour of continuing education; \$50 per hour for continuing education packages – Non–members

\*The WOA reports that there is significant availability of continuing education hours available at no charge at the local level to optometrists which mitigates the biennial cost of renewal for licensure.

The impact on biennial continuing education costs would range from insignificant (free continuing education available), to \$450 to \$2,700 (maximum cost per hour of continuing education for non–WOA members).

Although the cost of continuing education is a factor in the operational costs of a license holder, continuing education is a standard requirement of many professional examining boards and is seen as valuable educational experience which not only increases and refreshes the practice knowledge of a license holder, but also serves to protect the public. Additionally, there is a wide availability of continuing education for optometrists that could be less or more

expensive than what the WOA provides, however there is a wide range of choice available to optometrists for the market.

The Wisconsin Optometric Association provided an estimate (of their members) that over 50% of optometrists are operating as or working in a small business (25 people or less or under 5 million in sales).

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

#### **Fiscal Estimate**

The department estimates that this rule will require staff time in the Divisions of Management Services and Professional Credentialing. The one–time salary and fringe costs in the Divisions of Management Services and Professional Counseling are estimated at \$747.

Anticipated costs incurred by private sector:

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

Effect on small business:

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

#### **Agency Contact Person**

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

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before December 7, 2006 to be included in the record of rule–making proceedings.

## **Notice of Hearing Optometry Examining Board**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Optometry Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 449.06 (2m), Stats., as created by 2005 Wisconsin Act 297, and interpreting 449.06 (1) and (2m), Stats., the Optometry Examining Board will hold a public hearing at the time and place indicated below to consider an order to create ch. Opt 8, relating to continuing education relating to optometrists.

#### **Hearing Date, Time and Location**

**Date:** December 7, 2006  
**Time:** 9:15 a.m.  
**Location:** 1400 East Washington Avenue  
 (Enter at 55 North Dickinson Street)  
 Room 121C  
 Madison, Wisconsin

#### **Appearances at the Hearing**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by December 7, 2006, to be included in the record of rule–making proceedings.

#### **Analysis prepared by the Department of Regulation and Licensing.**

Statutes interpreted: Section 449.06 (1) and (2m), Stats.

Statutes authorizing promulgation: Sections 15.08 (5) (b) and 227.11 (2), Stats., and s. 449.06 (2m), Stats., as created by 2005 Wisconsin Act 297.

Explanation of agency authority: The Optometry Examining Board is authorized under s. 449.06 (2m), Stats., as amended by 2005 Wisconsin Act 297, to promulgate rules relating to continuing education requirements for optometrists.

Related statute or rule: Chapter RL 10, which identifies the diagnostic and pharmaceutical agents that have been approved by the Department of Regulation and Licensing for use by optometrists.

Plain language analysis: Chapter Opt 8 is being created to incorporate the continuing education requirements that optometrists must complete in order to renew their registrations. As a result of the changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, all optometrist will now be required to complete 30 hours of continuing education. Previously, only optometrists who were certified to use diagnostic pharmaceutical agents (DPA) and therapeutic pharmaceutical agents (TPA) were required to complete continuing education course work.

Section Opt 8.01 creates definitions for “biennium,” “COPE” and “hardship.”

Section Opt 8.02 identifies the course work that optometrists must complete and the procedure that they must follow in order to renew their registrations. The proposed rules require optometrists to complete 30 hours of approved continuing education in each biennial registration period. A minimum of 7 of the 30 hours must be approved glaucoma education. To obtain credit for completion of continuing education hours, optometrists must, at the time of each renewal of their registrations, sign a statement certifying that the course work has been completed. If audited, the optometrists will be required to submit their certificates of attendance issued by each course provider or other evidence of attendance satisfactory to the board. An optometrist who fails to meet the continuing education requirements by the renewal date may not engage in the practice of optometry until his or her registration is renewed under s. Opt 7.05.

Section Opt 8.03 creates the criteria for the approval of continuing education courses, which was previously contained in ch. Opt 6. In general, to apply for approval of a continuing education course, a course provider must submit to the board office an application on forms provided by the department that shall include the title, general description and an outline of the course, the dates, the location, the name and qualifications of the instructor of the course, and the sponsor of the course. The following criteria will be considered in the approval process:

- (1) The subject matter of the course pertains to the practice of optometry.
- (2) The provider of the continuing education course agrees to monitor the attendance and furnish a certificate of

attendance to each participant. The certificate of attendance shall certify successful completion of the course.

(3) The provider of the course is approved by the board.

(4) The course content and instructional methodologies are approved by the board.

In addition, alternate delivery method continuing education courses such as home–study courses, self–study packages, computer courses, televideo conferencing and other methods may be approved by the board. Finally, a continuing education course approved by the Council on Optometric Practitioner Education (COPE), or sponsored by a state optometric association, the American Optometric Association, the American Academy of Optometry, or an accredited school or college of optometry, which satisfies the criteria established under s. Opt 8.03 (2), shall be approved by the board without receipt of a course approval application from the course provider.

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

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Illinois:

Illinois’s administrative rules relating to the practice are found in Title 68: Professions and Occupations, Chapter VII: Department of Financial and Professional Regulation Part 1320, Optometric Practice Act of 1987. These rules may be found at:

<http://www.ilga.gov/commission/jcar/admincode.068/06801320sections.html>

Iowa:

Iowa’s administrative rules relating to the practice of optometry are found in their chapters 179 to 183. These rules may be found at:

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Michigan:

Michigan’s administrative rules relating to the practice of Optometry are found in their sections R. 338.211 to 338.279 (General Rules) and R 338.291 (Ethical and Unprofessional Conduct). There rules may be found at:

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Minnesota:

Minnesota’s administrative rules relating to the practice of optometry are under their Chapter 6500 and maybe found at:

<http://www.revisor.leg.state.mn.us/arule/6500/>

Summary of factual data and analytical methodologies:

The Department of Regulation and Licensing is assisting in drafting of the board’s rules as per recent amendments of ch. 449, Stats. The board’s professional and public members provided their input and guidance into the rule drafting process.

The department relied on information provided by the Wisconsin Association of Optometrists (WOA) regarding their membership and projected costs of continuing education. For licensee counts, the numbers were derived from the credentialing database of the Department of Regulation and Licensing in September of 2006.

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

Under the existing rules, which are now outdated due to changes in statute, the only optometrists required to take continuing education course work – 30 hours of board approved continuing education in the biennium – were those certified by the board to use therapeutic pharmaceutical agents (TPA). Recent updates to ch. 449, Stats., (practice of optometry) requires all optometrists to take continuing education course work, therefore the board is drafting rules to require 30 hours of continuing education in the biennium for renewal for all optometrists’ licensure.

As of September, 2006, there were a total of 2,171 Wisconsin licensed optometrists (in and out of state, active and inactive licenses). Of that number, there were 913 active license holders (in and out of state) certified to use TPA and therefore required to complete 30 hours of continuing education in a biennium.

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The impact on biennial continuing education costs would range from insignificant (free continuing education available), to \$450 to \$2,700 (max cost per hour continuing education for non–WOA members).

Although the cost of continuing education is a factor in the operational costs of a license holder, continuing education is a standard requirement of many professional examining boards and is seen as valuable educational experience which not only increases and refreshes the practice knowledge of a license holder, but also serves to protect the public. Additionally, there is a wide availability of continuing education for optometrists that could be less or more expensive than what the WOA provides, however there is a wide range of choice available to optometrists for the market.

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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 have no significant fiscal impact.

Effect on small business:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at [larry.martin@drl.state.wi.us](mailto: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](mailto:pamela.haack@drl.state.wi.us).

Place where comments are to be submitted:

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](mailto:pamela.haack@drl.state.wi.us).

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## Rule orders filed with the revisor of statutes bureau

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*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.*

### **Barbering and Cosmetology Examining Board (CR 05–118)**

An order affecting chs. BC 1 to 4 and 8, relating to definitions, microdermabrasion, chemical exfoliation, managers, ear piercing, waxing, nail enhancement, licensing requirements and reinstatement of license.  
Effective 12–1–06.

### **Commerce (CR 05–113)**

An order affecting chs. Comm 2, 20, 21, 60 and 61, relating to erosion control, sediment control and storm water management for the construction of buildings.  
Effective 4–1–07.

### **Health and Family Services (CR 06–075)**

An order affecting chs. HFS 110 and 111, relating to licensing emergency medical technicians.  
Effective 1–1–07.

### **Emergency Management (CR 06–088)**

An order creating ch. WEM 7, relating to the application process and criteria for determining eligibility for payments to local units of government and costs incurred for major catastrophes.  
Effective 1–1–07.

### **Emergency Management (CR 06–091)**

An order creating ch. WEM 8, relating to the establishment of standards for the adoption of the Mutual Aid Box Alarm System.  
Effective 1–1–07.

### **Natural Resources (CR 06–065)**

An order affecting ch. NR 45, relating to regulation of firewood entering department lands and affecting small businesses.  
Effective 12–1–06.

### **Public Instruction (CR 06–092)**

An order affecting ch. PI 21, relating to driver's education requirements and aid.  
Effective 1–1–07.

### **Public Instruction (CR 06–093)**

An order repealing ch. PI 15, relating to establishing qualifications and selection procedures for CESA administrators.  
Effective 1–1–07.

### **Regulation and Licensing (CR 06–069)**

An order affecting chs. RL 90 to 94, relating to application requirements, definitions, certification, reciprocity, waiver of education requirements and unprofessional conduct, governing the certification of massage therapists and bodyworkers.  
Effective 1–1–07.

### **Regulation and Licensing (CR 06–096)**

An order creating chs. RL 180 to 183 and Appendix I, relating to the issuance and renewal of licenses, the issuance of temporary permits, standards of practice and grounds for discipline of licensed midwives.  
Effective 1–1–07.

### **Revenue (CR 06–063)**

An order affecting ch. Tax 2, relating to the computation of the apportionment fraction of multistate businesses.  
Effective 12–1–06.

### **Revenue (CR 06–087)**

An order affecting ch. Tax 1, relating to the discretion that the department will follow in the enforcement of rules and guidelines as they apply to a small business.  
Effective 12–1–06.

### **Workforce Development (CR 06–044)**

An order affecting chs. DWD 12, 16, 17, 55 and 56, relating to Wisconsin Works, Emergency Assistance and child care.  
Effective 12–1–06.

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