

Wisconsin Administrative Register

No. 616



Publication Date: April 30, 2007

Effective Date: May 1, 2007



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Emergency rules now in effect

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

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

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

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

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

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

Agriculture, Trade & Consumer Protection

Rules adopted creating **ch. ATCP 112**, relating to credit report security freezes.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) will administer s. 100.54, Stats. as of January 1, 2007. DATCP is required under s. 100.54 (12), Stats. to adopt rules related to identification required of consumers requesting credit report security freezes.

(2) As of January 1, 2007, s. 100.54, Stats. will be in effect, however without an emergency rule the statute will be unclear regarding what constitutes proper identification for purposes of creating a security freeze, temporarily releasing a security freeze or permanently removing a security freeze from a consumer credit report.

(3) DATCP is adopting this emergency rule for the sole purpose of allowing consumers to clearly place a security freeze on their consumer credit report while the permanent rulemaking process is completed.

Publication Date: January 19, 2007
Effective Date: January 19, 2007
Expiration Date: June 18, 2007
Hearing Date: February 12, 2007

Commerce (Financial Resources for Businesses and Communities, Chs. Comm 104–131)

Rules adopted creating **ch. Comm 135**, relating to tax credits and exemptions for internet equipment used in the broadband market.

Exemption From Finding of Emergency

These rules establish the criteria for administering a program that will (1) certify businesses as temporarily eligible for tax credits and exemptions for Internet equipment used in the broadband market, and (2) allocate up to \$7,500,000 to these businesses for these tax credits and exemptions.

Pursuant to section 227.24 of the statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper. In accordance with section 17 (1) (d) of 2005 Wisconsin Act 479, this rule will remain in effect until January 1, 2008, or until the Department reports its certifications and determinations under this rule to the Department of Revenue, whichever is sooner.

The rules specify who is eligible for the income and franchise tax credits and the sales and use tax exemptions in this program, for Internet equipment used in the broadband market. Eligible equipment is also specified, along with how to apply for the certifications and allocations. Parameters for allocating the authorized total of \$7,500,000 are likewise specified. These parameters emphasize (1) efficiently initiating broadband Internet service in areas of Wisconsin that otherwise are not expected to soon receive this service, and (2) encouraging economic or community development. The rule chapter also describes the time-specific legislative oversight that is established in 2005 Act 479 for these allocations, and describes the follow-up reports that the Act requires from every person who receives a sales or use tax exemption under this chapter.

Publication Date: February 20, 2007
Effective Date: February 20, 2007
Expiration Date: See section 17 (1) (d) 2005 Wis. Act 479
Hearing Date: March 26, 2007

Dentistry Examining Board

Rules were adopted amending **ch. DE 11**, relating to better identifying the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation–enteral, conscious sedation–parenteral, deep sedation, and general anesthesia, and the requirements for each level.

Finding of Emergency

The board finds that failure to delay the effective date of CR04–095, from January 1, 2007, to July 1, 2007, will create a danger to the public health, safety and welfare. The extra six months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients.

Publication Date: December 21, 2006
Effective Date: December 29, 2006
Expiration Date: May 28, 2007
Hearing Date: January 31, 2007

Health and Family Services (Community Services, Chs. HFS 30—)

Rules adopted revising **ch. HFS 51**, relating to the adoption of children to include preadoption training requirements that will apply to private adoptions, international adoption, and adoptions of children with special needs and affecting small businesses.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

On April 10, 2006, the Wisconsin State Legislature enacted 2005 Wisconsin Act 293, which amended s. 48.84, Stats., to require first-time adoptive parents to receive preadoption training before a child may be placed for adoption by a court pursuant to s. 48.833, Stats., or before a prospective adoptive parent may petition for placement of a child for adoption under s. 48.837, Stats., or before a proposed adoptive parent may bring a child into Wisconsin for an international adoption under s. 48.839, Stats. The Act further requires the Department to promulgate rules that establish the number of hours and topics covered in the training of first-time adoptive parents. The training must cover issues that may confront adoptive parents in general and that may confront adoptive parents of special needs or international children.

The Act requires the rules to be effective April 1, 2007. Because the rules apply not only to the Department which administers the special needs adoption program with the assistance of private agencies under contract with the Department, and with the cooperation of county human and social service agencies, but also to private agencies that handle domestic adoptions and international adoptions, the Department has invested a significant amount of time gathering information from agencies regarding what training is currently provided to preadoptive parents. The Department conducted written and follow-up telephone surveys with private agencies to determine what content was currently being taught, and the format used for training. The Department's Adoption Services Committee met over several months to determine the curriculum for special needs adoption, the competencies that would be required for all training programs, the number of hours and the documentation that would be required in the training. In addition, the Department reviewed the proposed Hague Convention (federal) training requirements for proposed adoptive parents of international children to assure that Wisconsin's training requirements for first-time pre-adoptive parents would meet or exceed those requirements.

As a result of this extensive collaboration with stakeholders, development of the proposed training requirements has been unusually long and now requires the training requirements to be implemented as an emergency rule in order to meet the legislated date of April 1, 2007, the date adoptive parents must begin receiving preadoptive training.

This emergency rules are substantially similar to the proposed permanent rules except in the hours of training required. Under the emergency order, adoption agencies are required to provide adoptive parents with 2 hours of orientation and 10 hours of training. The proposed permanent rule requires adoption agencies to provide 2 hours of orientation and 16 hours of training. Stakeholder agencies have indicated that the additional 5 months under the emergency rule will allow them to prepare all proposed adoptive parents to meet the orientation and training requirements under the proposed permanent rules.

Publication Date: March 31, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007
Hearing Date: April 27, 2007

Insurance

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 a 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
Hearing Date: December 11, 2006

Natural Resources (3) (Fish and Game, etc., Chs. NR 1—)

1. Rules adopted amending **s. NR 1.21** and creating **s. NR 1.26**, relating to contracting for timber sale establishment services on state land.

Exemption from finding of emergency

As provided in section 13 of 2005 Wis. Act 166, “Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide a finding of emergency for a rule promulgated under this subsection.”

Section 1 of the proposed rule distinguishes between timber sales related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services, including prequalification of bidders based on experience with timber sales and related forest inventory work. Section 2 makes technical corrections in the definition of educational requirements for cooperating foresters. The change would make educational requirements for cooperating foresters and department foresters identical, including the allowance of training equivalent to that obtained at a college accredited by the Society of American Foresters.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

- 2. Rules adopted creating **s. NR 45.075**, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Exemption from finding of emergency

As provided in section 13 of 2005 Wis. Act 166, notwithstanding s. 227.24, Stats., the Department is not required to provide a finding of emergency for this rule and the emergency rule will remain in effect until a permanent rule is promulgated.

Rule FR-11-07(E) specifies those emergencies on forested land under the jurisdiction of the department over which the chief state forester shall have management authority. This rule describes causes of unforeseen damage or threat of damage to trees that could lead the chief state forester to declare an emergency and assume management authority. Included in the list of damaging agents that could lead to the declaration of an emergency are those required by the legislature: invasive species, pest infestation, disease, and damage to timber from fire, snow, hail, ice, or wind. The rule states that when declaring and responding to an emergency, the chief state forester shall consider the purpose of and management plan for the affected property in his or her decisions. This rule, however, would allow the chief state forester to take actions not described in the management plan for a property if that were the most appropriate response to the emergency. Finally, this rule describes the processes by which the declaration of the state of emergency shall be made effective, canceled or modified.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

- 3. Rules adopted revising **chs. NR 19 and 20**, relating to the control of fish diseases and invasive species.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a “notifiable” disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

Publication Date: April 8, 2007
Effective Date: April 8, 2007
Expiration Date: September 5, 2007
Hearing Date: May 3, 10 and 17, 2007
 [See Notice this Register]

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
Extension Through: June 5, 2007

Regulation and Licensing

Rules adopted creating **chs. RL 160 to 168**, relating to substance abuse professionals.

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."

Plain language analysis

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval and professional liability insurance for substance abuse professionals.

Publication Date: November 27, 2006
Effective Date: December 1, 2006
Expiration Date: April 30, 2007
Hearing Date: February 13, 2007

Transportation

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 (2) (Workforce Solutions, Chs. DWD 11 to 59)

1. Rules adopted revising **s. DWD 56.06**, relating to child care rates and affecting small businesses.

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:

The child care subsidy budget estimates that the child care subsidy program will have a tight budget by the end of fiscal year 06-07. This is due to flat federal funding, rising

caseload, and increased provider costs. To begin to address the tight budget, the Department will not increase the child care subsidy maximum rates for 2007. This emergency rule will maintain the maximum rates at 2006 levels.

Publication Date: January 22, 2007
Effective Date: January 22, 2007
Expiration Date: June 21, 2007
Hearing Date: May 7, 2007

2. Rules adopted revising **ch. DWD 56**, relating to child care enrollment underutilization.

Finding of Emergency

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

The child care subsidy budget is expected to have a substantial deficit by the end of state fiscal year 2006–07. While many factors will have an impact on the program's final fiscal balance, current spending patterns at current rates suggest that the program will exceed its 06–07 budget authorization by approximately \$46 million. This rule will provide for more efficient use of the program's limited funding.

Publication Date: April 1, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007

the adjustment of thresholds for application of prevailing wage rates.

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:

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

Publication Date: December 28, 2006
Effective Date: January 1, 2007
Expiration Date: May 31, 2007
Hearing Date: February 19, 2007

**Workforce Development
(Public Works Compensation, Chs. DWD
290–294)**

Rules adopted amending **s. DWD 290.155 (1)**, relating to

Scope statements

Employee Trust Funds

Subject

The Department of Employee Trust Funds proposes to amend s. ETF 40.01, relating to continued group health insurance coverage of an insured dependent after the death of the insured employee or annuitant.

Policy Analysis

Under s. 40.51, Stats., the Group Insurance Board provides group health insurance programs for eligible state employees and the eligible employees of local units of government in Wisconsin that elect to participate. Eligible Wisconsin Retirement System annuitants may also elect to be covered. The group health insurance plans are required to include provisions for continuation of coverage that, at a minimum, comply with s. 632.897, Stats.

Section 632.897 (2) (b) 3., Stats., requires that if a member dies while covered by group health insurance, then the spouse or dependent who was also covered through the member must be permitted to continue coverage under the group policy (or convert to individual coverage). Under s. 632.897 (2) (d), Stats., the plan sponsor or group policyholder must give written notice to the insured surviving dependents of their right to continuation coverage within 5 days after learning of the death of the insured employee or annuitant. The notice must include the amount of the payment required and the manner, place and time for making payments. As provided by s. 632.897 (3) (a), Stats., each surviving insured dependent, or the parent in the case of a minor, then has 30 days from the date of the notice to apply for continuation coverage and make the initial required payment. If this application is timely received, then the coverage continues without interruption. Continuation coverage may be terminated if the surviving dependent established residence outside Wisconsin, fails to make timely payment of a required premium or becomes eligible for similar coverage under another group policy. If no such events intervene, then a minimum of 18 months of continuation coverage must be allowed. After that, the insurer may compel the survivor to convert to an individual policy in order to continue coverage.

Under the current s. ETF 40.01 (1), Wis. Adm. Code, an application for health care coverage just be received from the surviving dependent within 90 days after the death of the insured employee (or annuitant) in order for the surviving dependent to continue his or her group health insurance coverage that was in effect prior to the death. Although exceptions to this deadline are not codified, the DETF has been granting continuation coverage without interruption when the surviving dependent shows good reason for not meeting the current 90-day deadline.

Another uncodified exception to the 90-day deadline allows the surviving dependent at least 30 days to apply after the Department sends out the standard packet of materials relating to death benefits. This exception conforms to the intent of s. 632.897 (3) (a), Stats. The death benefit packet contains the "Survivor Eligibility to Continue Health Insurance" form (ET-6203) giving notice of the right, if any, to continue group coverage, the deadline for applying and

premium payment options. A form ET-4701 schedule of premium rates, the Group Health Insurance brochure (ET-4112) and "Health Insurance Application," form (ET-2301) are all also included in the packet. The 30-day grace period assures that a delay in preparing and mailing out a death benefit packet will not deprive the surviving insured dependent of the opportunity to continue coverage.

The Department automatically continues covering surviving insured dependents after the death of the employee or annuitant, at least until the previously received premium payments are exhausted. Employees typically pay two months in advance for group health insurance coverage. Annuitants may pay one month in advance through a deduction from their sick leave conversion credits or (if there are no remaining credits) from their annuity. If a monthly annuity is insufficient to support premium deductions, an annuitant makes direct payments of premiums to the insurer. Direct payments schedules vary and premiums may be paid up to several months in advance.

In an effort to avoid unintended termination of health insurance coverage, Department staff will often write and telephone surviving dependents to remind them of the need to apply for the coverage within the 90-day deadline. If the 90-day deadline passes and all previously received premiums have been exhausted, the surviving dependents' health insurance coverage is terminated.

Terminated surviving dependents often call or write Department staff to explain why they failed to timely apply and to attempt to obtain coverage. Sometimes contact is initiated by health care providers, such as pharmacies, being asked to fill prescriptions after the coverage has ended. The Department generally finds reason to restore insurance coverage. The Department staff estimate (anecdotally) that roughly 98% of surviving insured dependents wish to continue the health insurance coverage. The main reason for not wishing to continue coverage is likely to be that the surviving dependent is already covered under other health coverage, which the surviving dependent has reason to prefer. This can occur, for example, when two spouses both work and each has family health insurance benefits through their separate employers.

The proposed rule-making is intended to address both customer service and Department work-load issues. The first goal is to reduce or eliminate interruptions in coverage for surviving dependents who wish to continue health coverage. Secondly, the Department would like to reduce staff time spent soliciting applications, reminding surviving dependents of the application deadline and handling telephone calls and correspondence with health care providers and surviving dependents concerning health coverage that was involuntarily terminated due to inaction by the surviving dependent.

The Department is therefore considering different options as part of this rule-making, including automatic enrollment of surviving insured dependents, extending periods for providing necessary documents and signatures, and revising Department forms to encourage and obtain necessary responses from surviving dependents. Most of the problems observed by Department staff stem from the death of an insured annuitant, so different procedures may be codified

with respect to the surviving insured dependents of annuitants compared to the survivors of deceased employees.

Statutory Authority

Under s. 40.03 (2) (ig), Stats., the DETF Secretary, with the approval of the Group Insurance Board, may promulgate rules required for the administration of the group health insurance plan. As provided by s. 227.11 (2) (a), Stats., each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Staff Time Required To Develop The Proposed Rule

The Department estimates that state employees will spend 200 hours to develop this rule.

Entities That May Be Affected By The Proposed Rules

The proposed rule will directly affect the surviving insured dependents of insured employees and annuitants with family health insurance coverage, when the date of the employee's or annuitant's death occurs after the effective date of the rule. \

The rule-making will also affect the administration of coverage under the group health insurance programs by Department of Employee Trust Funds staff, the third-party administrative contractor and the private Health Maintenance Organizations and similar insurers who agree to participate in the group health insurance program.

Comparison With Federal Regulations

The Group Insurance Board's group health plans are required by s. 40.51 (3), (4) and (5), Stats., to include provisions for continuation of coverage that, at a minimum, comply with s. 632.897, Stats., a statute based on federal requirements for so-called "COBRA continuation coverage." The requirement for group health plans to offer continuation coverage to certain individuals whose coverage might otherwise end originally comes from the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). COBRA amended the federal tax code, the Employee Retirement Income Security Act (ERISA) and the Public Health Service Act to require continuation coverage. COBRA expressly included the group health plans of state and local governments. However, "governmental plans" are exempt from ERISA and the regulations of the U.S. Department of Labor regulations based on that Act. See 29 U.S.C. §1003(b)(1). The U. S. Treasury regulations on COBRA continuation coverage expressly except state and local group health plans from the regulations. See 26 CFR 26 C.F.R. § 54.4980B-2 A-4(b)(3).

However, as the IRS expressly noted in 26 CFR 26 C.F.R. § 54.4980B-2 A-4(d), group health plans maintained by state or local governments are generally subject to parallel continuation coverage requirements that COBRA added to the Public Health Services Act. These COBRA continuation provisions apply to states that receive funds under the Public Health Service Act, as well as to their political subdivisions and to agencies or instrumentalities of such states and their political subdivisions. See the Notice published by the U.S. Department of Health and Human Services, 52 FR 604 (January 7, 1987).

The U.S. Department of Health and Human Services has not issued regulations concerning COBRA continuation coverage for the group health plans of state and local governments. If regulations are issued on continuation coverage requirements for state and local governments, then the H&HS regulations must conform to the similar regulations issued by the Treasury and the Department of Labor. See the final rules notice published by the Department

of Labor, 69 FR 30084 (May 26, 2004), footnote 4, citing House Conference Report No. 99-453 at 563 (1985). The Department of Labor COBRA continuation regulations begin at 29 CFR §2590.606-1 and the related Treasury regulations begin at 26 CFR § 54.4980B-1.

Meanwhile, the COBRA continuation provisions of the Public Health Services Act are codified beginning at 42 U.S.C. §300bb-1. Under 42 USC § 300bb-3(1), the death of a covered employee is a "qualifying event" giving rise to continuation rights for the surviving spouse and dependent children insured under the employee's coverage. The term "covered employee," as defined by 42 USC § 300bb-8 (2), includes retired employees. Within 30 days, the employer is required to notify the plan administrator of the employee's death and within 14 days after notification, the plan administrator must send notice of COBRA continuation rights to the affected surviving spouses or dependent children who were covered under the plan. See 42 U.S.C.A. § 300bb-6(2) and (4)(A).

During the "election period" the surviving spouse or dependent child who would otherwise lose coverage under the plan because of the employee's death, is entitled to elect continuation coverage. For this purpose, the "election period" is defined by 42 USC §300bb-5 to be a period of 60 days, beginning on the later of (a) the date of the notice provided to the surviving spouse (or dependent child), or (b) the date coverage would end as a result of the employee's death.

Health and Family Services

Subject

Foster parents.

Policy Analysis

The Department of Health and Family Services proposes to amend ch. HFS 56, Foster Home Care for Children, rules relating to creating an exception to the maximum placement standards for sibling placements, providing a foster parent handbook to foster homes and treatment foster homes where children are placed under s. 48.833, Stats., through the child welfare system, requirements for fingerprinting prospective foster and adoptive parents and checking child abuse and neglect registries for prospective foster and adoptive parents and adults in their homes, and revising requirements regarding the use of child safety seats.

Section 48.67, Stats., requires the Department to promulgate rules establishing minimum requirements for the issuance of licenses to and the operation of foster homes and treatment foster homes among other entities. The rules must be designed to promote the health, safety and welfare of the children placed in the care of the foster home or treatment foster home. The Department intends to amend the rule to require agencies to provide specified foster parents and treatment foster parents with a handbook that contains specific identified information. The agencies will have the option of using a handbook developed for the Department or their own handbook that contains all the required information. In addition, current rules provide directives on the use of child safety seats for foster children. 2005 Wisconsin Act 106 recently changed child safety seat requirements for all children in Wisconsin. The Department intends to amend the rules to conform to the new requirements.

Section 48.62 (4), Stats., directs the Department to promulgate rules that address supplemental foster care payments for special needs, exceptional circumstances, care in a treatment foster home and initial clothing allowances.

Research and experience in the area of child welfare demonstrates that generally children who are removed from their homes and placed in out of home care, will adjust more successfully if they are placed with their siblings in the same out of home placement. Current rules prevent the placement in a foster home of more than four children or more than six children in order to keep siblings together. The Department intends to establish rules that would create an exception, with specific standards, that would allow more than six children to be placed in a foster home if the children are siblings.

In addition, under the federal Adam Walsh Child Protection and Safety Act, P.L. 109-248, the state is required to have procedures in place to assure that all prospective foster and adoptive parents have their fingerprints submitted to the Federal Bureau of Investigations criminal information database. In addition, all prospective foster and adoptive parents and adults in their households who have resided outside of Wisconsin in the five years prior to their application for licensure, must be checked against the other state(s) child abuse and neglect registry if one exists, and finally all prospective foster and adoptive parents and adults in their household who have resided in Wisconsin must be checked against a Wisconsin child abuse and neglect registry if one exists. The Department is seeking legislation to mandate compliance with these new requirements and intends to establish rules that provide guidance and procedures for complying with these requirements.

Statutory Authority

The Department's authority to promulgate these changes to the rules is found at ss. 48.62 (4), 48.64 (4), 48.67, 48.675 (2), and 227.11 (2), Stats.

Staff Time Required To Develop The Proposed Rule

It is anticipated that approximately 80 hours of staff time will be required for the development, drafting, review and editing of the proposed rule. The Department will work with the Out-of-Home Care / Adoption Committee to develop the rule. Committee participants include representatives from the Bureau of Milwaukee Child Welfare, Bureau of Regulation and Licensing, county human services and social services agencies, and private child placing agencies.

Entities That May Be Affected By The Proposed Rules

The amendments to the rule will have a direct impact on the Department, including the Bureau of Milwaukee Child Welfare (BMCW), county human and social services agencies, licensed child placing agencies, and prospective and current foster parents and treatment foster parents, including those individuals who are seeking licensure as a foster parent for the purposes of adopting a child.

Comparison With Federal Regulations

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

Health and Family Services

Subject

The Department of Health and Family Services is repealing ch. HFS 119, rules relating to operation of the Health Insurance Risk Sharing Plan (HIRSP).

Policy Analysis

Pursuant to ch. 149, Stats., the department operates the Health Insurance Risk-Sharing Plan (HIRSP) which provides health insurance coverage for Wisconsin residents who: (a)

have been refused coverage, or coverage at an affordable price, in the private health insurance market because of their health condition; (b) are covered under Medicare because they are disabled or have tested positive for human immunodeficiency virus; or (c) do not have health insurance but, under certain circumstances, were covered under certain types of creditable coverage in the past.

Effective July 1, 2006, 2005 Act 74 transfers the department's authority to operate HIRSP to the Health Insurance Risk-Sharing Plan Authority that was created by Act 74. This transfer of authority means that effective July 1, 2006, the department is not statutorily authorized to operate HIRSP or to promulgate or implement ch. HFS 119 rules relating to the operation of HIRSP. Because the department will no longer be statutorily authorized to promulgate or implement ch. HFS 119, the department is hereby giving notice that ch. HFS 119 will be repealed by the department.

Statutory Authority For Proposed Rule

s. 227.11 (2), Stats., and 2005 Act 74.

Staff Time Required To Develop The Proposed Rule

10 hours.

Entities That May Be Affected By The Proposed Rules

N/A

Comparison With Federal Regulations

N/A

Natural Resources

Subject

The Department is requesting authorization to pursue a modification to NR 50 (snowmobile program) Wis. Admin code, regarding specifications for bridge design and the length of easements relating to bridge abutments and a corresponding modification to NR 64 (all-terrain vehicle program) regarding the bridge design specifications.

Policy Analysis

The issues involved in the proposed rule change relate to the change in design load concept involved in the design specifications for bridges constructed under the snowmobile and all-terrain vehicle grant programs. The Department has long published a set of guidelines for the design of bridge structures used in both the snowmobile and all-terrain vehicle grant programs. With the continued growth of the weight of snow grooming power units and drags, the infrastructure committee of the Snowmobile Recreation Council undertook a review of the specifications in conjunction with Sanjay Olson of the Department's Engineering and Construction section of the Facilities and Land Bureau. As part of the review process, the manner in which the design process is viewed was modified from point loading concept to a train loading concept. As a result of this modification, the suggestion was to increase the design load from its current 12,000 pounds to 14,000 pounds. NR 50 contains references to the design load that need to be changed to meet the newer design concept. NR 64, the administrative rules for the all-terrain vehicle program, is currently silent on the bridge design load and should be updated to reflect the newer concept.

In addition, the Snowmobile Recreation Council has indicated an interest in having the Department develop a sliding scale of easement lengths for lands that serve as bridge abutments that correspond to the total estimated cost of a bridge structure, i.e. longer easements required for more

expensive, larger bridge structures. The council feels that the current minimum of 3 years is not sufficient for bridge structures costing in excess of \$50,000.

Statutory Authority

The statutory authority to pursue the rule modifications is contained in s. 350.12 (4) and 23.33 (8) (a) and (9), Stats.

Staff Time Required

The time necessary to draft the changes should not exceed 40 hours.

The proposed design concept changes are consistent with standards established by American Association of State Highway Traffic Officials (AASHTO) for pedestrian bridges.

Entities Affected by the Rule

The eligible program sponsors (snowmobile – county ; all-terrain vehicle – municipalities) would be the parties immediately impacted by the design concept changes. Sponsors are the entities responsible for bridge design and construction bidding. The proposed development of a sliding scale of easements versus bridge costs for the snowmobile program would impact both the sponsor and cooperating snowmobile club who is generally involved in securing the easements necessary to place the bridge.

Comparison with Federal Regulations

The proposed rules do not interface with existing or proposed federal regulations.

The name of the individual responsible for rule drafting is Larry Freidig, 266-5897 or larry.freidig@wi.gov

Natural Resources

Subject

Objective of the rule. Under the federal Clean Air Act, the US Environmental Protection Agency (EPA) has responsibility for promulgating National Ambient Air Quality Standards (NAAQS) which are designed to protect public health (primary standards) and public welfare (secondary standards). Under state law, if EPA promulgates a NAAQS, the department is required to promulgate a similar, but no more restrictive standard. The EPA has recently promulgated NAAQS for ozone and particulate matter (PM). In order to both reflect current air quality health science and to maintain consistency with EPA-promulgated NAAQS, the department is proposing the following administrative rule actions:

a) Repeal the ambient air quality standards for total suspended particulates (TSP), annual PM10 particulate matter and 1-hour ozone from ch. NR 404, Wis. Adm. Code, as well as corresponding sections from ch. NR 484, Wis. Adm. Code.

b) Adopt the EPA-promulgated NAAQS for fine particulate matter (PM2.5) into ch. NR 404, Wis. Adm. Code, and incorporate the corresponding federal PM2.5 monitoring requirements into ch. NR 484, Wis. Adm. Code.

Policy Analysis

The EPA repealed the TSP NAAQS in 1987 and replaced it with more restrictive particulate NAAQS for PM10 (1987), followed by PM2.5 (1997) to more directly address the increasing scientific awareness of serious public health impacts from fine-scaled particulate matter. Although Wisconsin has retained the secondary TSP ambient air standard to address nuisance conditions, the department is now proposing to repeal the TSP ambient air standard in order

to focus resources on particulate emissions which more directly affect public health.

The EPA repealed the 1-hour ozone NAAQS in 2005 after it promulgated the 8-hour ozone NAAQS, based on its conclusion that the more restrictive 8-hour ozone standard provides greater protection of public health.

By repealing the TSP ambient air standard and adopting the federal PM2.5 ambient air standards, Wisconsin's air quality standards will be consistent with EPA's NAAQS. Additionally, Wisconsin's air program will be more focused on emission sources of fine particulates and their precursors, which have greater impacts on public health than emissions of TSP.

As required by s. 285.21 (1) (a), Stats., Wisconsin must promulgate ambient air quality standards similar to the NAAQS for the protection of public health and welfare. Consequently, there are no apparent policy alternatives to this proposed action.

Statutory Authority

Authorizing Wis. statutes: ss. 285.11 (1) and (6) and 285.21 (1) (a), Stats.

Staff Time Required

Approximately 250 hours of agency staff time is being budgeted to this proposed rule action.

Entities That May Be Affected By The Proposed Rules

Stationary source facilities that are seeking air permits may potentially be affected by focusing on modeled PM10 impacts because concurrent TSP impacts will no longer be modeled.

Comparison With Federal Regulations

A major purpose of this proposed rules package is to amend Wisconsin's ambient air quality standards in order to be consistent with the NAAQS, which are contained in Title 40, Part 50 of the Code of Federal Regulations (40 CFR part 50). This consistency is required under s. 285.21 (1) (a), Stats.

Agency Contact

Bill Adamski
Bureau of Air Management
Wisconsin Dept. of Natural Resources
P.O. Box 7921
Madison, WI 53704
608-266-2660
william.adamski@wisconsin.gov

Occupational Therapists Affiliated Credentialing Board

Subject

Occupational therapist supervision of occupational therapy assistants.

Policy Analysis

Objective of the rule. The proposed rule would clarify definitions and ambiguous provisions of Chapter OT 4 and recognize supervisory models that vary by practice setting, client needs, and the professional judgment of occupational therapists in supervision standards.

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

The purpose of revising the supervision rules is to ensure safe, effective, competent service is delivered to patients. The occupational therapist is accountable for the safety and effectiveness of the delivered occupational therapy services.

Occupational therapy assistants must receive supervision in partnership with the occupational therapist such that the two people will achieve the same or equivalent results irrespective of the method of service delivery. Some of the current provisions relating to “close” and “general” supervision are viewed as too restrictive, and others are viewed as too expansive.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2), 440.035 (1) and 448.965 (1) (b).

Existing or Proposed Federal Legislation

None.

Entities Affected by the Rule

Occupational Therapists, Occupational Therapy Assistants and facilities that employ OTs and OTAs.

Staff Time Required

150 hours.

Pharmacy Examining Board

Subject

Prescription drug labels.

Objective of the rule. To conform pharmacy practice rules to 2005 Wisconsin Act 195. In instances when a drug product equivalent is dispensed, the act permits inclusion on the label of both the generic name and the brand name of the drug product equivalent specified in the prescription order. The brand name must be omitted from the label if the prescribing practitioner requests that it be omitted.

Policy Analysis

Inclusion of both names recognizes both the drug product equivalent and brand name designation. The prescribing practitioner may decide if inclusion of the brand name on the label is in the best interests of the patient.

Entities That May Be Affected By The Proposed Rules

Physicians, pharmacists and pharmacies licensed in Wisconsin, and patients prescribed a drug product equivalent.

Comparison With Federal Regulations

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

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (d) and (e), Stats.

Staff Time Required To Develop The Proposed Rule

Estimate the amount of state employee time and any other resources will be necessary to develop the rule.

100 hours.

Workforce Development

Subject

Wisconsin Works.

Policy Analysis

The proposed rules will make changes to the Wisconsin Works (W-2) program affecting (1) job access loans; and (2) temporary absence of the child from the home due to child welfare issues.

Job access loans. Section 49.147 (6), Stats., provides that an individual is eligible to receive a job access loan if, in addition to meeting W-2 eligibility requirements, all of the following conditions are met: 1) the individual needs the loan to address an immediate and discrete financial crisis; 2) the individual needs the loan to obtain or continue employment, including a loan needed to repair or purchase a vehicle that is needed to obtain or continue employment; 3) the individual is not in default on any previous job access loan or repayment of any W-2 overpayments; and 4) the individual is not a migrant worker.

The current rules on job access loans provides that W-2 agencies shall issue a job access loan to an eligible individual in an amount not less than \$25 and not more than \$1600 in any 12-month period. The maximum allowable amount for all loans and the maximum outstanding balance for each individual receiving a job access loan is \$1600.

The proposed rules will increase the maximum allowable job access loan amount in any 12-month period and the maximum outstanding balance for each individual receiving a job access loan to \$2500 if the loan will be used to purchase a vehicle that is needed to obtain or continue employment. The maximum loan amount and outstanding balance will remain at \$1600 in all other cases.

Temporary absence of the child due to child welfare issues. Section 49.145 (2), Stats., provides that an individual is eligible for a W-2 employment position and a job access loan in a month only if all nonfinancial eligibility requirements are met, including that the individual is a custodial parent. Under the current s. DWD 12.10, a dependent child may be absent from the custodial parent's home but still be considered under the care of the custodial parent if: (a) The dependent child will not be or has not been continuously absent for more than 3 months and the child is expected to return to the custodial parent's home; (b) The absence is not the result of removal of a child under a dispositional order issued under s. 48.355, Stats., which places custody of a child outside the home for an indefinite period or a period of 3 months or more; and (c) The custodial parent continues to exercise responsibility for the care and control of the child.

The proposed rules will allow a case by case exception to the 3-month limit on temporary absence of a child when the absence is due to child welfare issues. This change will support service integration between W-2 and child welfare and help stabilize and support families for reunification with their children.

Statutory Authority

Sections 49.147 (6) (b) and 227.11 (2), Stats.

Entities That May Be Affected By The Proposed Rules

W-2 agencies, job access loan recipients, W-2 families with child welfare issues.

Comparison With Federal Regulations

42 USC 608 (10) requires denial of assistance for a minor child who has been, or is expected by a parent to be absent from the home for a period of 45 consecutive days, or at the option of the State., such period of not less than 30 and not more than 180 consecutive days as the State may provide for the State plan. The State may establish good cause exceptions to this provision as it considers appropriate.

There are no comparable federal requirements relating to job access loans.

Staff Time Required To Develop The Proposed Rule

100 hours.

Submittal of rules to legislative council clearinghouse

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

Agriculture, Trade and Consumer Protection

On April 13, 2007 the Department of Agriculture, Trade and Consumer Protection submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rules affect chs. ATCP 60, 69, 70, 71, 75, 77, 80, 81, 82 and 85, relating to food and dairy license and reinspection fees.

Agency Procedure for Promulgation

The department will hold public hearings on this rule after the Rules Clearinghouse completes its review. The department's Division of Food Safety is primarily responsible for this rule.

Contact Person

If you have questions, you may contact Tom Leitzke at 608-224-4711.

Commerce

On April 6, 2007 the Department of Commerce submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rules affect ch. Comm 47, relating to usual and customary cost schedule for Petroleum Environmental cleanup Fund awards.

Agency Procedure for Promulgation

The Environmental and Regulatory Services Division is responsible for the promulgation of rules. A public hearing is not required.

Contact Person

Sam Rockweiler, Code Development Consultant
(608) 266-0797
srockweiler@commerce.state.wi.us

Natural Resources

On April 12, 2007, the Department of Natural Resources submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 10, 12 and 16, relating to hunting, nuisance wild animal removal and captive wildlife.

Agency Procedure for Promulgation

A public hearing on the proposed rule is scheduled for May 15, 2007.

The Bureau of Wildlife Management is primarily responsible for the promulgation of the proposed rule.

Contact Person

If you have questions, please contact:
Scott Loomans
Bureau of Wildlife Management
Telephone (608) 267-2452

Natural Resources

On April 12, 2007, the Department of Natural Resources submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. NR 140, relating to groundwater quality standards for Alachlor-ESA.

Agency Procedure for Promulgation

A public hearings on the proposed rule is scheduled for May 11, 2007.

The Bureau of Drinking Water and Groundwater is primarily responsible for the promulgation of the proposed rule.

Contact Person

If you have questions, please contact:
William Phelps
Bureau of Drinking Water and Groundwater
Telephone (608) 267-7619

Natural Resources

On April 12, 2007, the Department of Natural Resources submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 440 and 446, relating to adoption of federal emission standards for mercury and additional mercury emission reductions.

Agency Procedure for Promulgation

Public hearings on the proposed rule are scheduled for May 15, 17, 22 and 23, 2007.

The Bureau of Air Management is primarily responsible for the promulgation of the proposed rule.

Contact Person

If you have questions, please contact:
Jon Heinrich
Bureau of air Management
Telephone (608) 267-7547

Regulation and Licensing

On April 4, 2007, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 227.11 (2), Stats., and subchapter VI of ch. 440, Stats., as created by 2005 Wisconsin Act 25, renumbered by 2005 Wisconsin Act 254, and amended by 2005 Wisconsin Act 407.

The proposed rule-making order relates to substance abuse professionals.

Agency Procedure for Promulgation

A public hearing is required and will be held sometime in late May, 2007.

Contact Person

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

Pamela.haack@drl.state.wi.us

Revenue

On April 11, 2007, the Wisconsin Department of Revenue submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends s. Tax 8.24, relating to reciprocal interstate shipments of wine.

Agency Procedure for Promulgation

A public hearing on the proposed rule will be scheduled.

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

Contact Person

If you have questions, please contact:

Dale Kleven
Income, Sales and Excise Tax Division
Telephone (608) 266-8253
E-mail dkleven@dor.state.wi.us

Workforce Development**Rule Submittal Date**

On April 16, 2007, the Department of Workforce

Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: Sections 108.02 (26), 108.14 (2), 108.015, and 227.11 (2) (a), Stats.

The proposed rules affect Chapter DWD 123, relating to unemployment insurance benefit reports filed by employers.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 30, 2007. The organizational unit responsible for the promulgation of the proposed rules is the DWD Unemployment Insurance Division.

Contact Information

Elaine Pridgen
Telephone: (608) 267-9403
Email: elaine.pridgen@dwd.state.wi.us

Workforce Development**Rule Submittal Date**

On April 16, 2007, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: Sections 108.02 (26), 108.14 (2), 108.015, and 227.11 (2) (a), Stats.

The proposed rules affect Chapter DWD 130, relating to wages for unemployment insurance benefit purposes.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 30, 2007. The organizational unit responsible for the promulgation of the proposed rules is the DWD Unemployment Insurance Division.

Contact Information

Elaine Pridgen
Telephone: (608) 267-9403
Email: elaine.pridgen@dwd.state.wi.us

Rule-making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection [CR 07-037]

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on proposed amendments to chapters ATCP 60, 69, 70, 71, 75, 77, 80, 81, 82 and 85, Wis. Adm. Code, relating to food and dairy license and reinspection fees.

DATCP will hold three public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Monday, June 11, 2007, for additional written comments. Comments may be sent to the Division of Food Safety at the address below, by email to debbie.mazanec@datcp.state.wi.us, or online by using the State of Wisconsin's Administrative Rules website at: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4712 or emailing debbie.mazanec@datcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to the State of Wisconsin's Administrative Rules website at:

<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 or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by May 9, 2007, by writing to Deb Mazanec, Division of Food Safety, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4712. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Dates and Locations:

Tuesday, May 15, 2007

10:00 a.m. to 1:00 p.m.

State of Wisconsin Office Building, Room 105
718 W. Clairemont Avenue
Eau Claire, WI 54701

Wednesday, May 16, 2007

10:00 a.m. to 1:00 p.m.

Appleton Public Library, Room C
225 N. Oneida Street
Appleton, WI 54911

Tuesday, May 22, 2007

10:00 a.m. to 1:00 p.m.

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

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

The Department of Agriculture, Trade and Consumer Protection ("DATCP") administers Wisconsin's dairy and food safety program. The program is funded, in major part, by dairy and food license fees. This rule increases current license fees in order to address an imminent deficit in the food safety program revenue account.

Statutory Authority

Statutory authority: 93.07 (1), 93.09 (10), 93.12 (7), 97.17 (4), 97.175 (2), 97.20 (2c) (b), (2g) (b), (2n) (b), (2w) and (4), 97.21 (4m) and (6), 97.22 (2) (b), (4) (am) and (8), 97.27 (3m) and (5), 97.29 (3) (am), (cm) and (5), 97.30 (3m) and (5), and 98.146 (4), Stats.

Statutes interpreted: 93.09, 93.12, 97.17, 97.175, 97.20, 97.21, 97.22, 97.27, 97.29, 97.30 and 98.146 (4), Stats.

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules needed to implement laws under its jurisdiction. DATCP also has specific authority, under the provisions cited above, to establish dairy and food license and reinspection fees.

Rule Content

This rule increases current license and reinspection fees for dairy and food businesses, as shown below. DATCP plans to adopt and publish this rule before May 1, 2008, but fee increases will first apply to fees that are due on July 1, 2008.

Entity	Current Fee(s)	Proposed Fee(s)
Dairy Farm	\$24 annual license fee (paid by dairy plant operator)	\$32
	\$24 or \$48 reinspection fee (paid by dairy plant operator if reinspection is required)	\$32 or \$64
Dairy Plant	Annual license fee (calculations include an increase in the basic license fee from \$96 to \$129): \$699 or \$879 for grade A processing plant (based on size)	\$937 or \$1,178

	\$397 for grade A receiving station	\$532
	\$96 for grade A transfer station	\$129
	\$96 to \$421 for grade B processing plant (based on size)	\$129 or \$565
	\$96 for grade B receiving station or transfer station	\$129
	Grade A milk procurement fee:	
	0.96 cent per 100 lbs.	1.081 cent per 100 lbs. (for payments due beginning July 1, 2008)
	Grade B milk procurement fee:	
	0.2 cent per 100 lbs.	No change
	Reinspection fee:	
	\$203 or \$246 for grade A processing plant	\$336 or \$394
	\$221 for grade B processing plant	\$360
	\$122 for grade A receiving station	\$229
	\$48 for grade B receiving station or transfer station	\$64
	Butter and cheese grading fee:	
	1.09 cents per 100 lbs. of product	1.5 cents per 100 lbs. of product
Food Processing Plant	\$78–\$685 annual license fee (based on size and type)	\$105 – \$918
	\$261 canning surcharge for canning plants with annual production of 25,000 or more	\$350
	\$49–\$431 reinspection fee (based on size and type)	\$66 – \$578
Food Warehouse	\$65–\$261 annual license fee (based on size and type)	\$87–\$350
	\$92–\$246 reinspection fee (based on size and type)	\$123 – \$330
Milk Distributor	\$60 annual license fee per facility	\$80
	\$25 reinspection fee per facility	\$34
Retail Food Store	\$37–\$562 annual license fee based on size and type)	\$50–\$753
	\$74–\$369 reinspection fee (based on size and type)	\$99 – \$494
Dairy, Food or Water Testing Lab	\$336 annual lab certification fee for each dairy or food test (other than milk drug residue screening)	\$450
	\$276 annual lab certification fee for each water test	\$370
	\$25 annual certification fee for each dairy or food analyst (other than milk drug residue screening analyst)	\$34
	\$50–\$500 initial fee and \$25–\$50 annual renewal fee for lab	\$67–\$670 initial fee

	performing milk	\$34–\$67 annual renewal fee
	drug residue screening	
	\$25 initial evaluation fee for milk drug	\$34
	residue screening analysts	
	(if more than 3 per lab)	
Bulk Milk	\$36 annual bulk milk tanker license fee	\$48
Tanker	\$36 bulk milk tanker reinspection fee	\$48
	\$48 bulk milk weigher & sampler license	\$64
	fee (2–year license)	
	\$48 bulk milk weigher and sampler	\$64
	reinspection fee	
Buttermaker or	\$60 license fee (2–year license)	\$80
Cheesemaker		
Butter or Cheese	\$60 license fee (2–year license)	\$80
Grader		

This rule does not affect any of the following:

- Fees that DATCP charges for certain services, such as review of food processing equipment plans, or the testing, timing and sealing of pasteurizers. DATCP is authorized to charge fees for such services in order to cover its cost of providing the services. DATCP may adjust these service fees by written notice, in order to keep fees consistent with service costs.

- License fees for milk and cream testers. DATCP is not authorized to adjust these fees by rule. Milk and cream testers currently pay a license fee of \$50 (for a 2–year license) and a reinspection fee of \$25.

- License fees for meat establishments. Meat inspection programs are funded by a combination of federal dollars and matching state GPR dollars. Under federal law, states must match federal dollars with state GPR dollars, not license fees.

Fiscal Estimate

State Fiscal Effect

This rule will increase food safety program revenues by approximately \$994,000 per year, beginning in FY 2008. The increase is needed to offset a projected deficit in DATCP’s food safety program revenue account beginning in FY 2007. A complete fiscal estimate is attached.

Wisconsin’s food safety program is funded by a combination of general tax dollars (GPR) and program revenue from license fees (PR). In 1991, license fees funded about 40% of program costs. The 1995–97 biennial budget act reduced the GPR funding share, so that PR funded about 50% of program costs. Subsequent state budgets further reduced the GPR funding share, so that PR now funds about 60% of the food safety budget.

Recent state budgets have lapsed a substantial amount of food safety license fee revenue to the state general fund (to help remedy state budget deficits). At the same time, DATCP has experienced a modest increase in operating costs. DATCP proposed a license fee increase in 2005, but was forced to withdraw a large share of that fee increase proposal. As a result, DATCP projects a substantial food safety budget deficit beginning in FY 2007.

DATCP is working to deliver effective food safety protection as efficiently as possible. For example:

DATCP has reduced its food and dairy staff by approximately 17% since 1990 (from 118 to 98 staff). Staffing trends fairly reflect changes in the food and dairy

industry, including a reduction in dairy farm numbers and increased delegation of retail food regulation to cooperating local governments. While food safety staffing needs have declined in some traditional areas, they are growing in other areas.

DATCP works with local governments to license and inspect retail food establishments. Thirty–four local entities license and inspect on behalf of DATCP, compared to 15 in 1997 (local participation is voluntary). Local entities now license and inspect 4,600 retail food establishments. DATCP licenses and inspects the remaining 4,200 establishments.

DATCP is working to reform national dairy regulations, which impose rigid Grade A inspection frequency requirements. DATCP is pursuing a more flexible, risk–based inspection system that could reduce inspection costs. In the meantime, Wisconsin must comply with current inspection mandates in order to ship milk and fluid milk products in interstate commerce.

- DATCP and the Wisconsin Department of Health and Family Services (DHFS) have eliminated duplicate licensing and inspection of grocery stores, restaurants, and combination grocery–restaurants. DATCP and DHFS have adopted uniform rules for grocery stores and restaurants, based on the federal Model Food Code.

Local Fiscal Effect

DATCP currently provides administrative support to local governments that license and inspect retail food establishments as agents of DATCP. Local governments establish their own license fees, and reimburse DATCP for administrative services costs. The reimbursement amount equals 10% of the license fees that DATCP would charge local license holders, if DATCP licensed them directly. An increase in DATCP license fees therefore increases local reimbursement payments (current payments do not fully compensate DATCP for its costs).

In FY 2006, local governments made a total of \$58,000 in reimbursement payments. If DATCP adopts the fee increases proposed in this rule, the reimbursement rate will remain at 10%, but the total reimbursement amount will increase to approximately \$76,500. This rule thus increases local costs by approximately \$18,500 (statewide total). Local governments can (and likely will) pass this increased cost on to retail food businesses. Local governments can set license fees to recover up to 100% of their reasonable operating costs.

Business Impact

This rule affects all milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy and food testing laboratories, milk haulers, buttermakers, cheesemakers, and butter and cheese graders licensed by the department. Many of these businesses are “small businesses” as defined in s. 227.114 (1) (a), Stats.

This rule increases annual license fees, reinspection fees and milk procurement fees, beginning with fees that are due in July, 2008. This will increase overall dairy and food industry costs by a combined total of approximately \$994,000 per year. Costs for individual businesses will depend on business size and type. Because of competitive market conditions, it may be difficult for affected businesses to increase prices to recover these costs.

The proposed fee increases will have a significant but not dramatic impact on affected businesses. In the multi-billion dollar dairy and food industries, license fees comprise a relatively small overall share of industry costs. DATCP has worked to maintain a fair and equitable license fee schedule.

Fees are based on actual food safety costs related to each license sector. Fees are also based on business size, food product type, and type of food handling operations. Smaller businesses generally pay lower fees than large businesses, and lower-risk businesses generally pay lower fees than higher-risk businesses.

This rule increases food safety license fees, but does not change other license requirements. This rule requires no

additional recordkeeping, and no added professional services to comply. A Business Impact Analysis is attached.

DATCP has not incorporated a small business enforcement policy in this rule, but has adopted a separate rule on that subject (see subch. VII of ch. ATCP 1). DATCP will seek voluntary compliance. However, food and dairy businesses must pay required license fees in order to obtain a license from DATCP.

Federal Regulation

There are no existing or proposed federal regulations related to license fees for food and dairy businesses operating in Wisconsin. However, national regulations such as the Interstate Pasteurized Milk Ordinance (“PMO”) have a significant impact on state program costs. The PMO includes rigid inspection frequency requirements for grade A dairy farms and other grade A dairy operations. Wisconsin must comply with the PMO in order to ship milk and fluid milk products in interstate commerce.

Surrounding State Programs

All of the surrounding states charge license fees to food and dairy businesses. License structure and fees vary between states. Differences in license fees are partly related to differences in general tax dollar support for food and dairy programs in different states.

Minnesota

Minnesota has a license and fee structure that is similar to, but not identical to, Wisconsin’s structure:

Dairy Fees – Minnesota

Grade A pasteurizing plant	\$500
Grade A farm	\$50
Grade A farm reinspection fee	\$45
Manufacturing plant	\$140 per pasteurizer unit
Manufactured farm	\$25
Manufactured farm reinspection fee	\$45
Processor assessment	\$.07 per cwt for fluid milk products sold for retail sale in Minnesota
Farm bulk milk pick-up tanker	\$25
Milk procurement fee	\$.0071 per cwt of raw milk purchased

Food Fees – Minnesota

Retail food handler	\$50–\$2,001 based on sales volume
Wholesale food handler	\$57–\$1,502 based on sales volume
Food broker	\$150
Wholesale food processor or manufacturer	\$169–\$2,571 based on sales volume

Michigan has a license and fee structure that is similar to, but not identical to, Wisconsin’s structure:

Dairy fees – Michigan

Milk plant	\$175
Farms sending milk to plant	\$5–\$10
Receiving or transfer station	\$50
Milk tank truck cleaning facility	\$50
Milk transportation company	\$20
Milk tank truck	\$10
Grade A milk distributor	\$50
Single service container and closure plant	\$50
Bulk milk hauler/sampler	\$40 for 2 years

Food Fees – Michigan

Retail food establishment	\$70
Limited wholesale food processor	\$70
Food warehouse	\$70
Extended retail food establishment	\$175
Wholesale food processor	\$175
Mobile food establishment	\$175

Temporary food establishment	\$28
Bottled water manufacturer	\$25 for each product registered and \$25 for each water dispensing machine

Iowa

Iowa has a license and fee structure that is similar to, but not identical to, Wisconsin’s structure:

Dairy Fees – Iowa

Milk plant	\$2,000 for 2 years
Transfer station	\$400 for 2 years
Receiving station	\$400 for 2 years
Milk hauler	\$20 for 2 years
Milk grader	\$20 for 2 years
Bulk milk tanker permit	\$50 for 2 years
Reinspection fee	\$40
Resealing pasteurizer fee	\$100 per reseal
Purchaser of milk fee – Grade A	\$.015 per cwt of raw milk purchased
Purchaser of milk fee – Grade B	\$.005 per cwt of raw milk purchased

Food Fees – Iowa

Mobile food unit or pushcart	\$20
Temporary food establishment	\$25
Food establishment	\$30–\$225 based on sales volume*
Food service establishment	\$50–\$225 based on sales volume*
Food processing plant	\$50–\$250 based on sales volume
Egg handler	\$15–\$250 based on cases sold

*If one establishment must hold both a food establishment and a food service establishment license, each license fee is 75% of the established fee.

Illinois

Illinois has a license and fee structure that is substantially different from the Wisconsin structure:

Dairy Fees – Illinois

Milk plant permit	\$100
Receiving or transfer station	\$50
Cleaning and sanitizing facility	\$50
Milk hauler–sampler	\$25
Milk tank truck	\$25
Certified pasteurizer sealer	\$100

Illinois does not license or charge fees to non–dairy food establishments, except that Illinois charges the following fees to the following establishments:

Food Fees

Salvage Operator	\$100 plus inspection fee based on size
Bottled water manufacturer or distributor	\$150
Egg handlers, distributors and breakers	\$15–\$200 plus inspection fee per case of eggs sold

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

[CR 07–035]

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 29.014 and 227.11, Stats., interpreting s. 29.014, Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 10, 12 and 16, Wis. Adm. Code, relating to hunting, nuisance wild animal removal and captive wildlife. Annually the department updates administrative code language to correct inconsistencies, update outdated language and provide clarification where appropriate. This year, the department is proposing the following changes related to hunting, nuisance wild animal removal and captive wild animals:

Clarify that a disabled person is a person who holds a Class A, B or C disabled permit.

Establish that the rabbit hunting season closes on the last day in February rather than February 28

Correct a cross reference in the firearm deer hunting season

Update the fisher zone map which is based on the recently updated Deer Management Zone Map

Relax bear carcass registration so that bear may be registered at stations that are adjacent to highways that form the boundary of the bear management zone in which it was killed

Correct drafting errors in the rule that establishes small game hunting in state parks

Clarify that landowners who are removing certain nuisance wild animals are not subject to hunting or trapping seasons

Update cross references and terminology so that Department of Agriculture, Trade and Consumer Protection’s animal diseases and movement rules and DNR’s captive wildlife rules are consistent.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule

will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

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

Tuesday, **May 15, 2007** at 1:00 p.m.

Room 608, GEF #2 Office Building

101 S. Webster Street, Madison, WI

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Scott Loomans at (608) 267-2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no fiscal impact.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until May 17, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 23.09 (2) (intro.), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 27.01 (2) (j), 29.041, 227.11 (2) (a) and 227.24 (1) (a), Stats., interpreting ss. 23.09 (2) (intro.), 23.22 (2) (a), 29.014 (1), 29.041 and 227.11 (2) (a), Stats., the Department of Natural Resources will hold public hearings on Natural Resources Board Emergency Order No. FH-22-07(E) which revises chs. NR 19 and 20, Wis. Adm. Code, pertaining to control of fish diseases and invasive species. This emergency order took effect on April 7, 2007. Viral hemorrhagic septicemia (VHS) virus is present in the Great Lakes, but not yet in inland waters of Wisconsin. This rule will aid the Department in controlling the spread of VHS virus in the following ways:

1. It prohibits the possession on the water and use of live fish, fish eggs, crayfish or frogs from outside Wisconsin, except minnows imported in compliance with U.S.

Department of Agriculture, Animal and Plant Health Inspection Service (USDA APHIS) and Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) import and health requirements.

2. It prohibits the possession on the water and use of dead bait, except used on Lake Michigan or on the water the bait originated from, or when preserved in a way that would kill VHS virus.

3. It prohibits the transportation of live fish or fish eggs from waters of the Great Lakes or the Mississippi River drainage, except 1) fish being exported in compliance with USDA APHIS regulations and orders; b) fish or fish eggs tested and found to be free of VHS virus; and c) fish or fish eggs transported with the prior written approval of the Department.

4. It requires all boaters to drain water from bilges, ballast, buckets and live wells immediately after leaving waters of the Great Lakes or of the Mississippi River drainage, unless exempted in writing by the Department.

5. It allows the Department to deny permits for the use of non-standard minnow gear to prevent the spread of invasive species or diseases.

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

Thursday, **May 3, 2007** at 5:00 p.m.

Lower Level Auditorium, La Crosse Public Library

800 Main Street

La Crosse

Thursday, **May 10, 2007** at 5:00 p.m.

Council Chambers, Ashland City Hall

601 Main Street West

Ashland

Thursday, **May 17, 2007** at 5:00 p.m.

Rooms 140 and 141, DNR Southeast Region Hdqrs.

2300 N. Dr. Martin Luther King Jr. Dr.

Milwaukee

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bill Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

The emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until May 28, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the emergency rule and fiscal estimate may be obtained from Mr. Horns.

**Notice of Hearing
Natural Resources**

**(Environmental Protection—General, Chs. NR
100—)**

[CR 07–034]

NOTICE IS HEREBY GIVEN that pursuant to ch. 160 and ss. 281.12 (1), 281.15 and 281.19 (1), Stats., interpreting ch. 160 and ss. 281.12 (1), 281.15, 281.19 (1) and 299.11, Stats., the Department of Natural Resources will hold a public hearing on the amendment of s. NR 140.10 Table 1, Wis. Adm. Code, relating groundwater quality standards for Alachlor–ESA. Alachlor–ESA (Alachlor ethane sulfonic acid) is a degradation product of the herbicide Alachlor that has been found extensively in Wisconsin groundwater. In accordance with ch. 160, Stats., the Department is required to propose rules establishing the recommendations from the Department of Health and Family Services as groundwater quality standards in ch. NR 140. The Department of Health and Family Services has recommended an enforcement standard of 20 mg/L for Alachlor–ESA. A concentration of 20 mg/L has been used as in interim health advisory level for Alachlor–ESA in Wisconsin since 1993.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266–1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

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

Friday, **May 11, 2007** at 11:00 a.m.
Room 511, GEF #2 Office Building
101 S. Webster Street
Madison, WI

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Phelps at (608) 267–7619 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Impact

Although additional monitoring costs may be imposed upon the state or local government entities that are within the regulated community, the extent of such monitoring and any costs associated with it—while too speculative to quantify at this time—are not expected to be significant. Thus, the Department believes it is unlikely that there will be additional

costs to state and local governments resulting from adopting these groundwater standards.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. William Phelps, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until May 18, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Phelps.

**Notice of Hearings
Natural Resources**

**(Environmental Protection – Air Pollution
Control – Chs. NR 400—)**

[CR 07–036]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 227.14 (1m) and 285.11 (1) and (6), Stats., interpreting ss. 285.11 (6), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 440 and 446, Wis. Adm. Code, relating to the establishment of provisions for major electric generating units in Wisconsin to comply with the Clean Air Mercury Rule promulgated by the U.S. Environmental Protection Agency (EPA). The State Implementation Plan developed under s. 285.11 (6), Stats., is also being revised.

Proposed revisions to ch. NR 440 adopt the federal New Source Performance Standards (NSPS) for mercury emission controls at coal–fired electric utility steam generating units that are constructed or reconstructed after January 30, 2004. Proposed revisions to ch. NR 446 repeal certain existing provisions and create new provisions to require each utility with coal–fired electrical generating units affected by the federal Clean Air Mercury Rule to meet an annual mercury emission cap. There are currently 48 such units in Wisconsin, operated by eight utilities.

The Clean Air Mercury Rule is a federal regulation promulgated by the EPA to reduce mercury emissions from new and existing coal–fired electrical generating units through a declining cap on mercury emissions in two phases. An initial reduction phase begins in 2010 and a second phase starts in 2018. The mercury caps were established by EPA and are expressed as annual state emission budgets that will not increase even if there are new coal–fired electrical generating units put into operation in the state. Wisconsin's budget during the first phase (2010 to 2017) is 1,780 pounds of mercury per year that declines to 702 pounds of mercury per year in the second phase (2018 and thereafter). The rule revisions being proposed do not include provisions allowing participation in EPA's national mercury emission trading program developed as an option for states to meet their emission budgets.

In these revisions, mercury emission caps are established for each electric utility in Wisconsin that owns or operates a coal–fired electrical generating unit affected by the federal rule. Beginning January 1, 2010, and every year thereafter, owners and operators of affected units must hold enough mercury emission allowances to equal or exceed calendar mercury emissions from their affected units. Owners and operators will be required to maintain annual records of the mercury emissions and held mercury allowances. A

compliance report for the previous year is required to be submitted to the Department annually by March 1st.

Mercury emission caps are established for each electric utility system by summing unit specific mercury allowance allocations from a main allocation pool (for existing affected units) and a new unit set-aside (for new affected units). For the purpose of allowance allocation, a unit is considered new if it commenced operation after January 1, 2001. From 2010 to 2017, 95% of the state phase 1 emission budget of 1,780 pounds would be allocated to existing units in ounces of mercury (27,056 ounces). After 2018, 95% of the 702 pound per hour state phase 2 emission budgets would be allocated to affected units (10,670 ounces). The portion of the state emission budget remaining would be placed in a new unit set-aside accessible by owners and operators by request. For 2010 through 2017 the new unit set-aside is 1,424 ounces (89 pounds) and beginning in 2018 and thereafter 562 ounces (35 pounds). The new unit set-aside is 5% of the total state emission budget.

Within 60 days of the effective date of this rule the Department will notify owners and operators of the annual mercury allowance allocation from the main allocation pool for each of their affected units for 2010, 2011 and 2012. Beginning in 2009 and thereafter written notifications by October 31st would be provided of the Department's determination of mercury allowance allocations from the main allocation pool for the year four years in the future. The new unit set-aside allocations are available upon request. Annually, written notifications of new unit set-aside allocations will be provided by June 30th for those requests received by May 1st. Any mercury allowances remaining in the new unit set-aside that are not allocated in a given year would be retired. Within 45 days of providing written notifications for allocations from the main allocation pool or new unit set-aside the Department would issue administrative orders to owners and operators receiving allocations.

These proposed revisions also include a provision that requires the Department to adopt rules by June 30, 2010, that would require all coal-fired electrical steam generating units affected by the CAMR to reduce their mercury emissions by 90% by January 1, 2020.

The above proposed provisions are hereinafter referred to as "Option 1." Option 1 is the Department's primary proposal and is the only alternative that has been fully developed with specific rule language.

NOTICE IS HEREBY FURTHER GIVEN that the Department is also seeking comment on three alternative approaches (hereinafter referred to as "Option 2," "Option 3," and "Option 4") for reducing mercury emissions from coal-fired electrical steam generating units. Additional information on these options is available at <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order Number AM-32-05.) The first alternative approach ("Option 2") would require all coal burning electrical generating units to achieve a 90 to 95% reduction in mercury emissions by January 1, 2012. This alternative was proposed to the Department in a Citizen Petition received on January 22, 2007, and requires more mercury emission reductions from coal-fired electrical steam generating units to be achieved sooner than proposed in AM-32-05. Another alternative approach ("Option 3") would allow the mercury emission reductions outlined in AM-32-05 to be achieved through EPA's national mercury emission trading program. Under this compliance approach, Wisconsin electric utilities could obtain or sell mercury allowances nationwide. A final alternative approach (Option 4") would allow participation in EPA's national mercury

emission trading as in Option 3, however participation would sunset January 1, 2015.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have a direct economic impact on small businesses. The Clean Air Mercury Rule imposes no reporting, compliance or performance standards on small businesses. The Clean Air Mercury Rule may increase the cost of electricity and therefore may have an indirect impact on small businesses through higher electricity costs. The Department's Small Business Regulatory Coordinator may be contacted at Small.Business@wi.gov or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

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

Tuesday, **May 15, 2007** at 1:30 p.m.

Green Bay State Office Building, Room 152-A
200 N. Jefferson St.
Green Bay, WI

Thursday, **May 17, 2007** at 1:30 p.m.

Portage County Annex Building, Conference Room 2
1462 Strongs Avenue
Stevens Point, WI

Tuesday, **May 22, 2007** at 1:30 p.m.

DNR Office Building, Front Conference Room
1300 W. Clairemont Ave.
Eau Claire, WI

Wednesday, **May 23, 2007** at 1:30 p.m.

Room 041 (DPI's room in GEF III), 125 S. Webster St.
Madison, WI

Thursday, **May 24, 2007** at 1:30 p.m.

DNR SER HQ, Room 141
2300 N. Martin Luther King Jr. Dr.
Milwaukee, WI

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please contact Robert Eckdale at (608) 266-2856 or by e-mail at Robert.Eckdale@Wisconsin.gov with specific information on your request at least 10 days before the date of the scheduled hearing. The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>.

(Search this Web site using the Natural Resources Board Order Number AM-32-05.) If you do not have Internet access, a personal copy of proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale by calling (608) 266-2856 or by writing him at Bureau of Air Management, P.O. Box 7921, Madison, WI 53707.

Written comments on the proposed rule may also be submitted to Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to Robert.Eckdale@Wisconsin.gov no later than June 11, 2007. Written comments will have the same weight and effect as oral statements presented at the public hearings.

Notice of Hearing Regulation and Licensing [CR 07-031]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and subchapter VII of ch. 440, Stats., as created by 2005 Wisconsin Act 25, renumbered by 2005 Wisconsin Act 254, and amended by 2005 Wisconsin Act 407, and interpreting s. 440.88, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to create chs. RL 164, 161, 162, 163, 166, 167 and 168, relating to substance abuse professionals.

Hearing Date, Time and Location

Date: May 22, 2007

Time: 9:15 A.M.

Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 121A
Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by June 1, 2007, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes interpreted: Section 440.88, Stats.

Statutory authority: Section 227.11 (2), Stats., and Subchapter VII of ch. 440, Stats., as created by 2005 Wisconsin Act 25, renumbered by 2005 Wisconsin Act 254, and amended by 2005 Wisconsin Act 407.

Explanation of agency authority: Subchapter VII of ch. 440, Stats., was enacted on July 25, 2005. It was amended by Act 407 which was enacted on May 10, 2006. Under subch. VII of ch. 440, Stats., the Department of Regulation and Licensing is required to promulgate rules relating to the issuance and renewal of credentials, requirements for certification, supervised practice, scope of practice, education approval, grounds for discipline and professional liability insurance.

Related statute or rule: Wisconsin Administrative Code s. MPSW 1.09 which relates to certification of social workers, professional counselors and marriage and family therapists to treat substance use disorder patients as a specialty.

Wisconsin Administrative Code ch. HFS 75 which relates to the certification of substance use disorder treatment clinics and programs.

Plain language analysis: 2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and Other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval, and professional liability insurance for substance abuse professionals.

Chapter RL 160 is being created to include definitions of terms that are used in subch. VII of ch. 440, Stats., and in chs. RL 160 to 167. The proposed rules include definitions for "accredited," "assessment," "behavioral science field," "CEH," "clinical substance abuse counselor," "clinical supervision," "clinical supervisor," "clinical supervisor-in-training," "comprehensive program," "core functions," "credential," "department," "DSM," "hour," "independent clinical supervisor," "intermediate clinical supervisor," "patient," "practice dimensions," "prevention," "prevention domains," "prevention specialist," "prevention specialist-in-training," "substance," "substance abuse counselor," "substance abuse counselor-in-training," "substance use disorder" and "transdisciplinary foundations."

Chapter RL 161 is being created to identify the requirements and procedures for submitting applications for licenses.

Chapter RL 162 is being created to identify the restrictions and minimum requirements for supervision of counselors by clinical supervisors.

Chapter 163 is being created to identify the scope and restrictions on the practice of the credential holders.

Chapter RL 166 is being created to identify the approval process and educational requirements for educational coursework and continuing education opportunities.

Chapter RL 167 is being created to require credential holders to have liability insurance in effect.

Chapter RL 168 is being created to identify the requirements for continuing education.

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

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

Comparison with rules in adjacent states:

Illinois: § 20 ILCS 301/15-5. Applicability. (a) It is unlawful for any person to provide treatment for alcoholism and other drug abuse or dependency or to provide services as specified in subsections (c), (d), (e), and (f) of Section 15-10 of this Act [20 ILCS 301/15-10] unless the person is licensed to do so by the Department. The performance of these activities by any person in violation of this Act is declared to be inimical to the public health and welfare, and to be a public nuisance. The Department may undertake such inspections and investigations as it deems appropriate to determine whether licensable activities are being conducted without the requisite license.

(b) Nothing in this Act shall be construed to require any hospital, as defined by the Hospital Licensing Act [210 ILCS

85/1 et seq.], required to have a license from the Department of Public Health pursuant to the Hospital Licensing Act [210 ILCS 85/1 et seq.] to obtain any license under this Act for any alcoholism and other drug dependency treatment services operated on the licensed premises of the hospital, and operated by the hospital or its designated agent, provided that such services are covered within the scope of the Hospital Licensing Act [210 ILCS 85/1 et seq.]. No person or facility required to be licensed under this Act shall be required to obtain a license pursuant to the Hospital Licensing Act [210 ILCS 85/1 et seq.] or the Child Care Act of 1969 [225 ILCS 10/1 et seq.].

(c) Nothing in this Act shall be construed to require an individual employee of a licensed program to be licensed under this Act.

(d) Nothing in this Act shall be construed to require any private professional practice, whether by an individual practitioner, by a partnership, or by a duly incorporated professional service corporation, that provides outpatient treatment for alcoholism and other drug abuse to be licensed under this Act, provided that the treatment is rendered personally by the professional in his own name and the professional is authorized by individual professional licensure or registration from the Department of Professional Regulation to do such treatment unsupervised. This exemption shall not apply to such private professional practice which specializes primarily or exclusively in the treatment of alcoholism and other drug abuse. This exemption shall also not apply to intervention services, research, or residential treatment services as defined in this Act or by rule. Notwithstanding any other provisions of this subsection to the contrary, persons licensed to practice medicine in all of its branches in Illinois shall not require licensure under this Act unless their private professional practice specializes exclusively in the treatment of alcoholism and other drug abuse.

(e) Nothing in this Act shall be construed to require any employee assistance program operated by an employer or any intervener program operated by a professional association to obtain any license pursuant to this Act to perform services that do not constitute licensable treatment or intervention as defined in this Act

(f) Before any violation of this Act is reported by the Department or any of its agents to any State's Attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Department or its designated agent, either orally or in writing, in person or by an attorney, with regard to such contemplated proceeding. Nothing in this Act shall be construed as requiring the Department to report minor violations of this Act whenever the Department believes that the public interest would be adequately served by a suitable written notice or warning.

77 Ill. Adm. Code 2060.201 Types of Licenses. Substance abuse treatment and intervention services as specified in Section 2060.101 of this Part shall be licensed by the Department. An organization may apply for an intervention and a treatment license at the same facility and all services authorized by both an intervention and a treatment license shall be authorized by a single license issued to that facility. Consistent with rules herein, services may be provided to adults as well as adolescents. The license certificate for the facility shall specify all levels of care and a designation of adult and/or adolescent services. Individuals who are 16 and 17 may be admitted as adults and individuals who are 18, 19 and 20 may be admitted as adolescents provided that the

assessment of such individuals includes justification based on the person's behavior and life experience.

a) Treatment. A treatment license issued by the Department may authorize substance abuse services as established in the ASAM Patient Placement Criteria. The level of care and category (adolescent/adult) shall be specified on the license application or, after licensure, on any application to add an additional level of care and/or category (adolescent/adult).

b) Intervention. An intervention license issued by the Department may authorize the following services:

1) DUI Evaluation. Substance abuse evaluation services for persons who are charged with driving under the influence (DUI) offenses pursuant to the Illinois Vehicle Code [625 ILCS 5/11-501] or similar local ordinances that determine the offender's risk to public safety and make a subsequent corresponding recommendation for intervention to the Illinois courts or the Office of the Secretary of State.

2) DUI Risk Education. Substance abuse risk education services for persons who are charged with driving under the influence (DUI) offenses pursuant to the Illinois Vehicle Code [625 ILCS 5/11-501] or similar local ordinances.

3) Designated Program. A program designated by the Department to provide screening, assessment, referral and tracking services pursuant to Article 40 of the Act.

4) Recovery Homes. Alcohol and drug free housing with rules, peer-led groups, staff activities and/or other structured operations which are directed toward maintenance of sobriety for persons in early recovery from substance abuse or persons who have completed substance abuse treatment services or who may still be receiving such treatment at another licensed facility.

77 Ill. Adm. Code 2060.205 Unlicensed Practice. (a) Whenever the Department determines that an unlicensed organization or person is engaging in activities that require licensure, pursuant to the specifications in Section 2060.101 of this Part, it shall issue an order to that organization or person to cease and desist from engaging in the activity. The order shall specify the particular services that require licensure, and shall include citation of relevant Sections of the Act and this Part.

(b) The Department's order shall be accompanied by a notice that instructs the recipient that written documentation may be submitted to the Department within 10 calendar days to support a claim that licensure is not required, or that the recipient is properly authorized to conduct the services.

(c) After the expiration of the 10 day period, if the Department believes that the organization or unlicensed person is continuing to provide services that require licensure, the matter shall be referred to the appropriate State's Attorney or to the Office of the Attorney General for prosecution.

77 Ill. Adm. Code s. 2060.221 Change of Ownership/Management. a) Each license issued by the Department shall be valid only for the premises and persons named in the application. Licensure is not transferable. A license shall become null and void when:

1) a change in ownership involving more than 25% of the aggregate ownership interest within a one year period or a significant change in management; or

2) a change of 50% or more in the board of directors of a not-for-profit corporation within a one year period.

b) In order to obtain a new license reflective of the change in ownership the licensee shall submit to the Department:

1) written notification at least ten calendar days prior to any of the above referenced changes in ownership; and

2) an application for initial licensure and the license application fee of \$200 per license.

c) Failure to notify the Department within ten calendar days relative to the above referenced changes in ownership will result in the imposition of a license fee of \$1000 for each affected license.

77 III. Adm. Code § 2060.309 Professional Staff Qualifications. (a) All professional staff providing clinical services (except as set forth in subsection (b)(2)), as defined in this Part, shall:

1) hold clinical certification as a Certified Alcohol and Drug Counselor from the Illinois Alcoholism and Other Drug Abuse Professional Certification Association (IAODAPCA), 1305 Wabash Avenue, Suite L, Springfield, Illinois 62704; or

2) be a licensed professional counselor or licensed clinical professional counselor pursuant to the Professional Counselor and Clinical Professional Counselor Licensing Act [225 ILCS 107]; or

3) be a physician licensed to practice medicine in all its branches pursuant to the Medical Practice Act of 1987; or

4) be licensed as a psychologist pursuant to the Clinical Psychology Practice Act [225 ILCS 15]; or

5) be licensed as a social worker or licensed clinical social worker pursuant to the Clinical Social Work and Social Work Practice Act [225 ILCS 20].

b) All professional staff providing only clinical assessments, DUI evaluations or designated program intervention services, as defined in this Part, shall:

1) meet one of the qualifications specified in subsection (a) above; or

2) hold assessor certification as a Certified Assessment and Referral Specialist (CARS) from IAODAPCA.

c) In any medically managed or monitored detoxification service at least one staff, 24 hours a day, shall:

1) be a registered nurse pursuant to Section 3(k) of the Illinois Nursing and Advanced Practice Nursing Act of 1987 [225 ILCS 65/3(k)];

2) be a licensed practical nurse pursuant to Section 3(i) of the Illinois Nursing and Advanced Practice Nursing Act of 1987 [225 ILCS 65/3(i)] who has completed at least 40 clock hours of formal training in the field of alcoholism or other substance abuse; or

3) be a certified emergency medical technician pursuant to Section 4.12 of the Emergency Medical Services (EMS) Systems Act [210 ILCS 50/4.12] who has completed at least 40 clock hours of formal training in the field of alcoholism or other substance abuse.

d) Any other staff who provide direct patient care that is not defined as a clinical service shall be supervised by an individual who meets the requirements for professional staff as defined in subsection (a), (b) or (c)(1) and (2) as applicable to detoxification.

e) any new professional staff, including interns, who will provide clinical services in a treatment or designated program service and who do not meet the requirements of subsection (a) or (b) when hired shall:

1) meet the requirements specified in subsection (a) or (b) within two years after the date of employment; and

2) not work in any supervisory capacity until such requirements are met; and

3) work under the direct, verifiable supervision of an individual who has staff supervisory responsibility at the

facility and who meets the requirements for professional staff specified in subsection (a); and

4) sign, and adhere to, a professional code of ethics developed by the organization.

f) The above referenced supervision shall last until the employee meets at least one of the requirements for professional staff designation specified in subsection (a) or (b) or until the two year period has elapsed. Such supervision is verifiable, at a minimum, by:

1) signature of the supervisor and the affected employee on the treatment plan and all reviews of or any change to the patient's treatment plan; and

2) documentation of face-to-face supervision meetings, at least once monthly. This supervision can occur in a group or individual setting and shall be a distinct activity separate from regularly scheduled patient staffings.

g) Any employee providing clinical services under supervision at one or more organizations who does not meet at least one of the requirements specified in subsection (a) or (b) within the relevant two year period shall not provide any direct clinical services at the end of the two years until such requirement is met.

h) All staff providing DUI risk education services shall:

1) meet one of the qualifications specified in subsection (a); or

2) hold Alcohol and Other Drug Abuse (AODA) certification from IAODAPCA.

i) It is the responsibility of each organization to ensure that all professional staff meet the requirements outlined in this Section.

j) The Department will consider granting an exception to the requirements specified in subsection (e) of this Section based upon timing of certification or licensure examinations and part-time employment. In such cases, the exception will be time limited and based upon the minimum extension of time necessary to achieve full compliance. All exceptions shall be granted in accordance with Section 2060.303 of this Part.

77 III. Adm. Code § 2060.311 Staff Training Requirements. a) All organizations shall provide an initial employee orientation to all staff within the first seven days after employment that shall include, at a minimum, the following information:

1) An overview of all organization operations, including the specific duties assigned to the employee; emergencies and disaster drills; familiarization with existing staff backup and support; and all required training.

2) An overview of this Part for all staff.

3) Information on bloodborne pathogens and universal precautions (as those terms are defined in the regulations set forth in Section 2060.413 of this Part) and the importance of tuberculosis control and personal hygiene, the responsibilities of all staff with regard to infection control and an overview of the fundamentals of HIV, AIDS and tuberculosis control.

4) Information on HIV and AIDS relative to the etiology and transmission of HIV infection and associated risk behaviors, the symptomatology and clinical progression of HIV infection and AIDS and their relationship to substance abuse behavior, the purposes, uses and meaning of available testing and test results, relapse prevention and sensitivity to the issues of an HIV infected patient.

5) An overview of the principles of patient confidentiality, all related federal and state statutes and all record keeping requirements regarding confidential information.

b) Within the first six months after employment, any and all staff providing a DUI evaluation service shall attend one complete DUI Orientation training session offered or approved by the Department.

c) Within the first 12 months after employment, any and all staff providing a DUI risk education intervention service shall attend the first day of a DUI Orientation training session offered or approved by the Department.

d) In addition to mandatory training specified in subsections (b) and (c) of this Section, each DUI evaluator or Risk Education instructor shall obtain additional hours of substance abuse training annually consistent with the requirements of their professional staff credential.

77 III. Adm. Code § 2060.313 Personnel Requirements and Procedures. a) All professional staff:

1) shall be at least 18 years of age; and

2) cannot have been convicted of any felony or had any subsequent incarceration for at least two years prior to the date of employment.

b) Verification of the requirements specified in subsection a) above shall be documented on the Department's Schedule L at the time of employment and this form shall be maintained in the employee's personnel file. Prior to employment a copy of the Schedule L, along with a letter requesting an exception for employment, shall be sent to the Department relative to any person that indicates a felony conviction within the time period specified above.

c) In addition, any staff providing DUI evaluation or risk education services shall not have a suspension or revocation of driving privileges for an alcohol or drug related driving offense for at least two years prior to the date of employment.

d) Any staff providing clinical services to or any other supportive services for a child or adolescent who is receiving treatment at a facility, or is receiving child care at a facility, or is residing at a facility with a parent who is in treatment shall consent to a background check to determine whether they have been indicated as a perpetrator of child abuse or neglect in the Child Abuse and Neglect Tracking System (CANTS), maintained by the Department of Children and Family Services as authorized by the Abused and Neglected Child Reporting Act [325 ILCS 5/11.1(15)]. The organization shall have a procedure that precludes hiring of indicated perpetrators based on the reasons set forth in 89 III. Adm Code 385.30(a) and procedures wherein exceptions will be made consistent with 89 III. Adm. Code 385.30(e) and procedures for record keeping consistent with 89 III. Adm. Code 385.60.

e) The organization shall ensure that treatment services for special populations (gender, youth, criminal justice, HIV, etc.) are delivered by appropriate professional staff as clinical needs indicate.

f) The organization shall have written personnel procedures approved by the management or, if applicable, the board of directors. Such procedures shall apply to all full and part-time employees and shall include the process for:

- 1) recruiting, selecting, promoting and terminating staff;
- 2) verifying applicant or employee information;
- 3) protecting the privacy of personnel records;
- 4) performance appraisals, and review and update of job descriptions, for all positions in the organization;
- 5) disciplinary action, including suspension and termination;
- 6) employee grievances;

7) employment related accident or injury;

8) handling instances of suspected or confirmed patient/client abuse and/or neglect by staff, whether paid or volunteer;

9) handling instances of suspected or confirmed alcohol and other drug abuse by staff; and

10) documentation that the personnel procedures, and any changes in procedures, have been distributed to employees and are available on request.

g) The organization shall provide documentation that all personnel procedures have been reviewed and approved at least annually by the Authorized Organization Representative or, if applicable, the board of directors.

h) A personnel file shall be maintained for each employee that contains:

1) the employee's name, address, telephone number, social security number, emergency contact and telephone number;

2) resume and evidence of qualifications;

3) documentation of the Schedule L and any relevant background checks and/or exception request;

4) unless otherwise kept in a training file, documentation of required training and continuing education received while employed by the organization (as indicated by a certificate of completion or the title, date and location of the training and the signature of the staff member who attended the training);

5) a copy of any professional certification, current license and/or registration, and date of employment and/or termination from the organization;

6) a copy of the signed applicable professional code of ethics as referenced in Part 2060.309(e)(4) of this Part; and

7) documentation of annual review of the organization's policy and procedures manual by all staff during their first year of employment and, annually thereafter, any updated sections that pertain to each staff member.

i) Each personnel file shall be maintained for a period of five years from the date of employee termination.

77 III. Adm. Code § 2060.401 Levels of Care. Substance abuse treatment shall be offered in varying degrees of intensity based on the level of care in which the patient is placed and the subsequent treatment plan developed for that patient. The level of care provided shall be in accordance with that specified in the ASAM Patient Placement Criteria and with the following:

a) Level 0.5: Early Intervention. An organized service, delivered in a wide variety of settings, for individuals (adult or adolescent) who, for a known reason, are at risk of developing substance-related problems. Early intervention services are considered sub-clinical or pre-treatment and are designed to explore and address problems or risk factors that appear to be related to substance use and to assist the individual in recognizing the harmful consequences of inappropriate substance use. The length of such service varies according to the individual's ability to comprehend the information provided and to use that information to make behavior changes to avoid problems related to substance use or the appearance of new problems that require treatment at another level of care. Early intervention services are for individuals whose problems and risk factors appear to be related to substance use but do not appear to meet any diagnostic criteria for substance related disorders. Examples of individuals who might receive early intervention are at-risk individuals (i.e., family members of an individual who is in treatment or in need of treatment) or DUI offenders classified at a moderate risk level.

b) Level I: Outpatient. Non-residential substance abuse treatment consisting of face-to-face clinical services for adults or adolescents. The frequency and intensity of such treatment shall depend on patient need but shall be a planned regimen of regularly scheduled sessions that average less than nine hours per week.

c) Level II: Intensive Outpatient/Partial Hospitalization. Non-residential substance abuse treatment consisting of face-to-face clinical services for adults or adolescents. The frequency and intensity of such treatment shall depend on patient need but shall be a planned regimen of scheduled sessions for a minimum of nine hours per week.

d) Level III: Inpatient Subacute/Residential. Residential substance abuse treatment consisting of clinical services for adults or adolescents. The frequency and intensity of such treatment shall depend on patient need but shall, except in residential extended care as defined in this Part, include a planned regimen of clinical services for a minimum of 25 hours per week. Inpatient care, with the exception of residential extended care as defined in this Part, shall require staff that are on duty and awake, 24 hours a day, seven days per week. During any work period, if professional staff as defined in Section 2060.309(a) of this Part are not on duty, such staff shall be available on call for consultation relative to any aspect of patient care. Residential extended care shall require staff on duty 24 hours a day, seven days per week and that low intensity treatment services be offered at least five hours per week. Any staff providing clinical services shall meet the requirements for professional staff as defined in Section 2060.309(a) of this part. Individuals who have been in residence for at least three months without relapse may be used to fulfill any remaining staff requirements.

e) Level IV: Medically Managed Intensive Inpatient. Inpatient subacute residential substance abuse treatment for patients whose acute bio/medical/emotional/behavioral problems are severe enough to require medical and nursing care services. Such services are for adults or adolescents and require 24 hours medically directed evaluation, care and treatment and that a physician see the patient daily.

Michigan: MICH. ADMIN. CODE R 325.14201 Establishment or maintenance and operation of program without license prohibited.

Rule 201. A person shall not establish or maintain and operate a substance abuse program unless licensed by the office in accordance with the act and these rules.

MCLS §. 330.3101

B Department of Public Health

1. All the authority, powers, duties, functions and responsibilities of the Licensing of Substance Abuse Programs and the Certification of Substance Abuse Workers in the Division of Program Standards, Evaluation and Data Services of the Center for Substance Abuse Services, including the authority, powers, duties, functions and responsibilities set forth in the relevant parts of Act No. 368 of the Public Acts of 1978, as amended, being Section 333.6231 to 333.6251 of the Michigan Compiled Laws, are hereby transferred from the Department of Public Health to the Director of the Department of Commerce by a Type U transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

MCLS § 333.6231 Rules.

(1) With the assistance of the department, and after consultation with the commission and the committee, the office shall promulgate rules for the administration of this article and the licensing of substance abuse service programs.

The rules shall include reasonable criteria for the protection and well-being of individuals receiving services and the rights of recipients of services and shall define financial information. Rules governing recipient rights shall be promulgated not later than 1 year after the effective date of this section.

(2) The rules shall apply to a public or private firm, association, organization, or group offering or purporting to offer specific substance abuse treatment and rehabilitation services or prevention services, and which receives or requests public funds, patient fees, third party payments, or funds through public subscription for the treatment, rehabilitation, or prevention of substance abuse.

(3) The rules shall not apply to an individual currently licensed by this state to provide medical, psychological, or social services. The licensee may voluntarily apply for a license to provide substance abuse treatment and rehabilitation services or prevention services. To receive state or federal funds for substance abuse treatment and rehabilitation services or prevention services, a person shall obtain a license under this part.

Minnesota: Minn. Stat. § 62J.52 Establishment of uniform billing forms.

(c) Services to be billed using the uniform billing form HCFA 1500 include physician services and supplies, durable medical equipment, noninstitutional ambulance services, independent ancillary services including occupational therapy, physical therapy, speech therapy and audiology, home infusion therapy, podiatry services, optometry services, mental health licensed professional services, substance abuse licensed professional services, nursing practitioner professional services, certified registered nurse anesthetists, chiropractors, physician assistants, laboratories, medical suppliers, and other health care providers such as day activity centers and freestanding ambulatory surgical centers.

Iowa: "Counselor" means an individual who, by virtue of education, training or experience, provides treatment, which includes advice, opinion, or instruction to an individual or in a group setting to allow an opportunity for a person to explore the person's problems related directly or indirectly to substance abuse or dependence.

641 IAC 155.1(125)

"Iowa board of substance abuse certification" means the professional certification board that certifies substance abuse counselors and prevention specialists in the state of Iowa.

641 IAC 155.1(125)

"Sole practitioner" means an individual incorporated under the laws of the state of Iowa, or an individual in private practice who is providing substance abuse treatment services independent from a program that is required to be licensed in accordance with Iowa Code section 125.13(1).

641 IAC 155.1(125)

i. Personnel providing screening, evaluations, assessments or treatment shall be certified through the Iowa board of substance abuse certification, or certified by an international certification and reciprocity consortium member board in the states of Illinois, Minnesota, Nebraska, Missouri, South Dakota, and Wisconsin; or be eligible for certification or have education, training, and experience in the substance abuse field.

641 IAC 155.21(8)(a)(15)(i.)

Summary of factual data and analytical methodologies:

The professions had previously been under the authority of the Department of Health and Family Services (under ch. HFS 75), who contracted the regulation and certification

of substance abuse professionals to the Wisconsin Certification Board. The Legislative Audit Bureau performed a limited review of the Wisconsin Certification Board and issued a report on May 11, 2005.

The rules proposed represent a re-codification of existing standards for certification developed by the Wisconsin Certification Board. The legislature, under 2005 Wisconsin Act 25 and later amended by 2005 Wisconsin Act 407, set the statutory requirements for the new levels of licensure and mandated that the Department of Regulation and Licensing draft language for certification and regulation of substance abuse professionals.

To assist in promulgation of the rules, the department has held regular meetings with the Substance Abuse Counselors Advisory Committee for recommendations and development of the draft rules. Subsequently, the department promulgated emergency rules effective December 15, 2006 which includes chs. RL 160 to 163 and chs. RL 166 to 168 (the department had promulgated chs. RL 164 and 165 as permanent rules on January 1, 2007). As the emergency rules were promulgated in December of 2006, the final permanent rules (below) are essentially a redraft of the emergency rules, with changes made for errors in the initial drafting, changes in timelines for effective dates of applicability and minor policy changes where prudent – again at the recommendation of the advisory committee.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The Department of Regulation and Licensing, based upon the advice of the advisory committee is proposing changes to the existing standards of certification and regulation of substance abuse professionals. The department, to minimize impact on the profession, and preserve the experiential pathway into the profession, has attempted to minimize drastic changes, and make changes only where the advice of the committee and the protection of the public are preserved.

These proposed rules will affect the existing 4,631 credential holders regulated by the department (Database count of in state active and inactive substance abuse credential holders, as of February 2007). These credential holders may operate at state departmental locations (e.g. Department of Corrections) as well as state certified AODA treatment clinics under ch. HFS 75 (DHFS). An unknown number of certificate holders are likely to be operating in public, not-for-profit private treatment centers and for-profit treatment centers.

There were significant “grandparenting” provisions within the statutes that will ensure that existing (active and renewal) certificate holders will not lose their certification upon transfer if they do not meet the requirements for the new certificate (e.g. higher educational requirements). The grandparenting provisions do not apply for new applicants after December 15, 2006. Those who applied (new applicants) after December 15, 2006 were under the jurisdiction of the department, and as such were to meet the requirements specified in our rules. Additionally, the department has instituted substantial grace periods for 12 month grace periods for supervision of substance abuse counselors which would allow clinics one year’s time for the supervisors to attain appropriate credentials required for supervision in their clinics.

The department is proposing changes as follows:

Educational Standards:

The proposed rules require a minimum of an associate’s degree in a behavior science to qualify for the clinical level counselor, and by requirement, qualification for supervisory

certification. This is an increase in educational requirements; however, an underlying degree is often a standard for professional requirements. This may prevent existing non-clinical substance abuse counselors from accessing higher levels of credentials until they achieve the underlying degree; however, the advisory committee has recommended that for protection of the public, a minimum of an associate’s degree in a related behavioral science should be instituted.

The proposed rules reduce the required level of continuing education from 48 hours in the biennium to 40 for both substance abuse counselors and clinical substance abuse counselors. This is a reduction for applicable credential holders.

* The proposed rules eliminate the existing system of pre-certification education and training from multiple and separate sources, including Wisconsin Certification Board accredited programs, endorsed trainings, seminars and home study (etc.), and require that the core training for the effective treatment of substance use disorder treatment be obtained from comprehensive and cohesive programs.

Note* The changes to the educational structure may be the primary area effecting the practice of small business. As per above, companies that self reportedly operate as a small business do sell home study programs and trainings to the Wisconsin substance abuse professional education market. One such business, Laban’s Trainings of Pennsylvania (<http://www.last-homestudy.com> 3 employees, unknown earnings), sells home study programs to the AODA counselor community nationwide. They were an endorsed trainer of the WCB, prior to the transference of AODA regulation from the WCB to the DRL, and home study programs such as theirs could be counted for over 200 hours of the 360 hours of training required. The remainder was required to come from association sponsored workshops, seminars and school-based coursework. Under the new rules, program providers like Laban’s still have access to the certificate holders through the offering of continuing education programs required for recertification. For substance abuse counselors, that means 40 hours of continuing education is required in the biennium (a reduction from 48 hours to 40). In addition, Laban’s and other home study providers may still access the market held by “comprehensive program providers” because the rules are written to restrict individuals from assembling their own education from untracked or uncoordinated sources, however, the rules allow those program providers to assemble the comprehensive program of 360 hours that they provide to their students. This may include a local provider which could source a 3rd party such as Laban’s to supplement the coursework requirement.

Practice Restrictions. The proposed rules contain scope of practice and restrictions which include:

Restrictions on the practice of substance abuse counselors-in-training: This credential does not assure competency; therefore, a clinical supervisor will be required to authorize the in-training counselor to provide functions when adequately trained.

The supervision of in-training counselors may not be done by clinical supervisors-in-training.

Clinical supervisors will be legally and ethically responsible for the practice of their supervisees, shall have the authority and responsibility to provide emergency consultation, interrupt/stop unsafe practice and to terminate the supervised relationship if necessary.

New definitions of who may provide supervision or qualify as a clinical supervisor: Supervision may only be provided by those with exemptions under the statutes (psychologists, psychiatrists, clinical substance abuse supervisors, or ch. 457, Stats., credential holders who have

obtained a clinical supervision certification via their specialty AODA certification under s. MPSW 1.09).

These changes may affect small business; however, where standards were increased, the department is proposing grace periods for these requirements. Additionally, these changes were seen as necessary to achieve the minimal competency required for safe practice and protection of the public.

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

Anticipated costs incurred by private sector:

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

Fiscal Estimate

The Department estimates that this rule will require staff time in the Divisions of Management Services, Professional Credentialing, Office of Legal Counsel and Office of Examinations. The one-time salary and fringe costs in the Division of Professional Credentialing, Office of Legal Counsel and Office of Examinations are estimates at \$22,900. The on-going salary, fringe, supplies and services costs in the Division of Professional Credentialing, Division of Board Services and the Office of Examinations are estimated at \$77,300.

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 June 1, 2007 to be included in the record of rule-making proceedings.

Notice of Hearing Workforce Development (Unemployment Insurance, Chs. DWD 100-150)

[CR 07-038]

NOTICE IS HEREBY GIVEN that pursuant to ss. 108.04 (13), 108.09 (1), 108.14 (2), and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to unemployment insurance benefit reports filed by employers and affecting small businesses.

Hearing Information

Wednesday, **May 30, 2007** at 1:30 p.m.

G.E.F. 1 Building, H306
201 E. Washington Avenue
Madison, WI

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

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 108.04 (13), 108.09 (1), and 108.14 (2), Stats.

Related statute or rule: NA

Explanation of agency authority. Section 108.09 (1), Stats., provides that each employer that is notified of a benefit claim shall promptly inform the department in writing as to any eligibility question in objection to the claim together with the reasons for the objection.

Section 108.04 (13) (c), Stats., provides that if an employer, after notice of a benefit claim, fails to file an objection to the claim under s. 108.09 (1), any benefits allowable under any resulting benefit computation shall, unless the department applies a provision of this chapter to disqualify the claimant, be promptly paid.

Section 108.04 (13) (f), Stats., provides that if benefits are erroneously paid because the employer fails to file a report required by this chapter, fails to provide correct and complete information on the report, fails to object to the benefit claim under s. 108.09 (1), Stats., or aids and abets the claimant in an act of concealment, the employer is at fault.

Section 108.14 (2), Stats., provides that the department may require from any employing unit which employs one or more individuals to perform work in this state any reports on employment, wages, hours and related matters which it deems necessary to carry out Chapter 108, Stats. The department may also adopt and enforce all rules which it finds necessary or suitable to carry out the chapter.

Summary of the proposed rule. Chapter DWD 123 requires certain reports to be filed by an employer to assist the department in determining a claimant’s benefit claim. The current rule contains information that is obsolete and confusing. The proposed rule will update and clarify Chapter DWD 123 to include descriptions and filing procedures for the following benefit reports used by the department:

Separation Notice. The department sends a separation notice to an employer when a new benefit claim is initiated and the employer is identified as having employed the

claimant in the base or lag period of the claim, or when a benefit claim is resumed and the employer is identified as having employed the claimant after the last claimed week. The employer must complete and return the separation notice to the department if any information on the notice is incorrect; there is vacation, dismissal, or holiday pay assigned to any period beyond the claimant's last day of work; there is an eligibility issue that applies to the claimant that is not identified on the separation notice; or the claimant did not work for the employer.

Wage Verification/Eligibility Report. The department sends the wage verification/eligibility report to an employer while a benefit claim is in progress to verify partial wages earned from the employer as reported by the claimant on weekly claim certifications and to verify the claimant's continuing eligibility for benefits. The employer must complete and return the wage verification/eligibility report to the department if information on the form report is missing or incorrect; an eligibility issue applies to the claim; or the claimant did not work for the employer.

Urgent Request For Wages. The department sends the urgent request for wages to an employer when the claimant reports having been paid wages by the employer during the base period or an alternate base period, and the department has no record of such wages. The employer must complete and return the urgent request for wages to the department.

The filing requirements for the benefit reports in the proposed rule provide that a report is considered to be filed when it is completed and returned to the department within the time limit and with the department location specified on the report. Returning an incomplete report, even if it is received within the time limit, constitutes a failure to file the required report. Failure to file the required report is considered an admission by the employer that no eligibility question exists regarding that claimant. Eligibility issues raised after the due date of a required report will be resolved pursuant to ss. 108.09 (2) (b) and 108.04 (13), Stats.

The proposed rule will repeal information on the following obsolete reports:

Work Record Report (form UC-203). This form was used to collect wage data on a claim-by-claim basis before the implementation of quarterly wage reporting.

Final Work Record Report. This form was used when an employer ceased to have employees, had gone out of business, or terminated coverage under the unemployment insurance program without providing the department with satisfactory assurance that the employer would promptly file a Work Record Report (UC-203) if the department requested it.

The proposed rule will also repeal a provision on the Urgent Request for Wages in Chapter 111, regarding quarterly wage reports, and create a new provision in Chapter DWD 123, regarding benefit reports. The requirement that an employer pay a \$15 fee for tardy filing of the Urgent Request for Wages will be repealed. The department has not enforced this provision recently due to the administrative inefficiency of collecting the fee.

Summary of factual data and analytical methodologies. The department has changed the type of benefit reports required from employers with the implementation of the quarterly wage reporting and other procedural changes. The proposed rule updates and clarifies Chapter DWD 123 to reflect these changes.

Comparison with rules in adjacent states. Iowa, Michigan, and Illinois have unemployment insurance benefit rules similar to Wisconsin regarding reports that notify employers of the filing of a claim, request wage and separation

information, and allow employers to notify the states of possible ineligibility of claimants. Minnesota does not have unemployment insurance benefit rules.

Effect on small businesses. The proposed rule affects small businesses but does not have a significant economic impact on a substantial number of small businesses. The DWD Small Business Regulatory Coordinator is Jennifer Jirschele, (608) 266-1023, jennifer.jirschele@dwd.state.wi.us.

Analysis used to determine effect on small business. The reports provide information on claimants' employment separations, dates of work, wages and other payments, and other issues that may be disqualifying. Most of the information is required by Chapter 108, Stats.

Fiscal Impact

The proposed rule will have no fiscal impact on state or local government.

Agency Contact Person

Carla Breber, UI Disputed Benefits Claims, (608) 266-7564, carla.breber@dwd.state.wi.us.

Written Comments

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

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than May 31, 2007, will be given the same consideration as testimony presented at the hearing.

Notice of Hearing Workforce Development (Unemployment Insurance, Chs. DWD 100-150) [CR 07-039]

NOTICE IS HEREBY GIVEN that pursuant to ss. 108.02 (26), 108.14 (2), 108.015, and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to wages for unemployment insurance benefit purposes.

Hearing Information

May 30, 2007	Madison
Wednesday	G.E.F. 1 Building,
	H306
1:30 p.m.	201 E. Washington
	Avenue

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation

of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 108.02 (26), 108.14 (2), 108.015, and 227.11.

Statutes interpreted: Section 108.02 (26) Stats.

Related statute or rule: 26 USC 3306 (b); Section 108.05 (3), Stats.; Chapter DWD 101

Explanation of agency authority. Section 108.02 (26), Stats., defines what is and what is not included as “wages” for purposes of unemployment insurance, unless the department otherwise specifies by rule.

Section 108.015, Stats., provides that unless the department otherwise provides by rule, s. 108.02 (26), Stats., shall be interpreted consistently with 26 USC 3306 (b). 26 USC 3306 (b) is the federal definition of “wages” for purposes of unemployment insurance.

Section 108.14 (2), Stats., provides that the department may adopt and enforce all rules which it finds necessary or suitable to carry out Chapter 108, Stats., regarding unemployment insurance.

Summary of the proposed rule. Chapter DWD 130 clarifies how the department applies the definition of wages at s. 108.02 (26), Stats., for benefit purposes. The current Chapter DWD 130 has not been updated since Wisconsin adopted the federal definition of wages at s. 108.02 (26), Stats.

The proposed rule will repeal s. DWD 130.03, relating to the treatment of tips. This section contains obsolete terms and cross-references and inaccurately states that there is a different treatment of tips for contribution purposes and benefit purposes based on an obsolete statutory provision. The current treatment of tips is governed solely by s. 108.02 (26) (b) 3., Stats., which provides that “wages” includes the value of tips that are received while performing services which constitute employment, and that are included in a written statement furnished to an employer under 26 USC 6053 (a).

The proposed rule will also repeal s. DWD 130.07, which contains obsolete information on supplemental unemployment benefit plans. Under s. 108.02 (26) (c) 16., Stats., any contribution made by an employer into or payment made from a supplemental unemployment benefit plan for employees is not considered wages if the contribution or payment is not considered wages under 26 USC 3306 (b), regardless of whether the plan is part of an employer profit-sharing plan.

The proposed rule creates a new section that provides that when s. 108.02 (26), Stats., or the Federal Unemployment Tax

Act, 26 USC 3301 to 3311, require that a payment meet the requirements of a particular section of the internal revenue code to not be considered wages, the employer shall demonstrate to the satisfaction of the department that the payment meets such requirements. This standard will apply to the determination of whether supplemental unemployment benefit plans are considered wages, as well as other issues raised under s. 108.02 (26), Stats., or FUTA.

The proposed rule also corrects an obsolete cross-reference and clarifies language in the section on the value of room or meals.

Summary of factual data and analytical methodologies. The provision on tips is repealed because the information on the treatment of tips for contribution purposes is obsolete and the information on the treatment of tips for benefit purposes duplicates the statute. The provision on supplemental unemployment benefit plans is repealed because it does not add to the information in the statute.

Comparison with rules in adjacent states. The department did not find rules on the specific issues in the proposed rules in the adjacent states.

Effect on small business. The proposed rule does not affect small businesses. The DWD Small Business Regulatory Coordinator is Jennifer Jirschele, (608) 266-1023, jennifer.jirschele@dwd.state.wi.us.

Analysis used to determine effect on small business. The proposed rule repeals obsolete provisions and brings the rule into conformity with current statutory provisions. There are no significant substantive changes.

Fiscal Impact

The proposed rule will have no fiscal impact on state or local government.

Agency Contact Person

Carla Breber, UI Disputed Benefits Claims, (608) 266-7564, carla.breber@dwd.state.wi.us.

Written Comments

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

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than May 31, 2007, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection

(CR 06–130)

Ch. ATCP 112, relating to credit report security freezes.

Agriculture, Trade and Consumer Protection

(CR 06–136)

Ch. ATCP 30, relating to soil fumigant pesticides.

Natural Resources

(CR 06–121)

Ch. NR 820, relating to the annual reporting of groundwater pumping information from high capacity wells, designation of groundwater management areas, environmental review of high capacity well applications for impacts on groundwater protection areas and springs and evaluation of wells with greater than 95% water loss.

Natural Resources

(CR 06–132)

Ch. NR 5, relating to mandatory boating education program, temporary certifications and course fees.

Natural Resources

(CR 06–133)

Ch. NR 5, relating to registration of boats used exclusively to make advertisements and creating definitions.

Natural Resources

(CR 06–134)

Ch. NR 19, relating to establishing specialized fees for Internet based ATV and snowmobile safety certification programs.

Public Service Commission

(CR 06–139)

Ch. PSC 137, relating to the energy efficiency programs and renewable resource programs that public utilities offer to their customers and retail electric cooperatives offer their members.

Transportation

(CR 06–099)

Ch. Trans 112, relating to medical standards for driver licensing and general standards for school bus endorsements.

Rule orders filed with the revisor of statutes bureau

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

Agriculture, Trade and Consumer Protection (CR 05-013)

An order affecting ch. ATCP 50, relating to agricultural nutrient management.
Effective 6-1-07 and 8-1-07.

Commerce (CR 06-113)

An order affecting ch. Comm 104, relating to Woman-Owned Business Certification Program.
Effective 6-1-07.

Public Instruction (CR 06-094)

An order affecting ch. PI 40, relating to the youth options program.
Effective 6-1-07.

Public Instruction (CR 06-098)

An order affecting ch. PI 30, relating to grants for high cost special education.
Effective 6-1-07.

Public Service Commission (CR 06-112)

An order affecting ch. PSC 118, relating to a renewable resource credit tracking program.
Effective 6-1-07.

University of Wisconsin System (CR 06-078)

An order affecting chs. UWS 2, 4, 7 and 11, relating to procedures for dismissal of academic staff in special cases.
Effective 6-1-07.

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the April 30, 2007, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.

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

Agriculture, Trade and Consumer Protection (CR 06-085)

An order affecting ch. ATCP 156, relating to seed potato certification and grading. Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

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

This rule creates a clearer, more up-to-date framework for the seed potato certification program administered by the college. This rule modernizes Wisconsin’s certified seed potato rule to address changing industry practices and standards. Among other things, this rule:

- Clarifies and updates certification standards and procedures. This rule reflects current national and international standards. The college may grant limited written variances in some cases, if special conditions warrant.
- Modernizes the system for classifying certified seed potatoes.
- Expands the number of sources from which growers may obtain propagative material for certified seed potatoes, while minimizing disease risk.
- Clarifies approval of laboratories and greenhouses that provide propagative material used to produce certified seed potatoes.
- Recognizes new laboratory testing capabilities.
- Clarifies responses to findings of bacterial ring rot.
- Provides for certification reciprocity between states, provided that other states apply equivalent standards. Seed potatoes certified in another state must be labeled accordingly.
- Modernizes requirements for certified seed potato labeling, shipping and handling, based on current industry needs.
- Provides a mechanism by which a seed potato grower may obtain informal and formal review of an adverse certification decision by the college.
- Prohibits fraudulent sales of uncertified seed as certified seed.
- Provides greater consistency between Wisconsin and other states, while maintaining high Wisconsin standards.

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

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

This rule will harmonize Wisconsin certified seed potato rules with rules in other states, so that Wisconsin seed potato growers can continue to export certified seed potatoes. This rule will also make it easier for Wisconsin seed potato growers to acquire propagative material from reliable sources outside this state.

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

This rule generally provides more workable certification standards for seed potato growers. In a very small number of cases, this rule may prevent certification of seed potato lots that are currently eligible for certification. However, the new standards are designed to prevent the introduction and spread of potato diseases. Effective disease control is important for the entire potato industry.

Summary of Comments by Legislative Review Committees

On January 3, 2007, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Higher Education and the Assembly Committee on Agriculture. Both committees’ review periods expired without any action.

Controlled Substances Board (CR 06-058)

An order affecting ch. CSB 2, relating to the scheduling of two schedule I controlled substances. Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

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.

Summary of Comments by Legislative Review Committees

No comments were received.

Controlled Substances Board (CR 06-059)

An order affecting ch. CSB 2, relating to the scheduling of two schedule I controlled substances. Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

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.

Summary of Comments by Legislative Review Committees

No comments were received.

Insurance (CR 06-118)

An order affecting ch. Ins 9, relating to preferred provider plan applicability dates. Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

No comments were received.

Medical Examining Board (CR 06-114)

An order affecting ch. Med 1, relating to the requirements for completion of the 3-step sequence of the United States Medical Licensing Examination (USMLE). Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

These proposed rules will have not 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.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources (CR 06-097)

An order affecting ch. NR 1, relating to the definition of "generally accepted forestry management practices". Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

Small businesses affected by this rule include forest landowners, foresters, resource manager, loggers and equipment operators. There are no compliance, reporting, bookkeeping or other procedures imposed on small businesses as part of this rule. Small businesses will not have a significant economic impact as a result of this rule.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Assembly Committee on Forestry and the Senate Committee on environment and Natural Resources. There were no comments on the proposed rule.

Natural Resources (CR 05-075)

An order affecting ch. NR 243, relating to animal feeding operations. Effective 7-1-07.

Summary of Final Regulatory Flexibility Analysis

It is expected that most confined animal feeding operations (CAFO) currently meet the definition of a small business. It is not expected that the proposed rule will have a significant economic impact on a substantial number of small businesses. While the economic impact might be significant for some small businesses, the number of small businesses affected is small.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Assembly Committee on Agriculture and the 2005 Senate Committee on Agriculture and Insurance. Both committees held public hearings. On August 3, 2006, the Senate Committee requested the Department to make modifications. At its meeting on January 24, 2007, the Natural Resources Board adopted modifications that were then submitted to the Assembly Committee on Agriculture and the 2007 Senate Committee on Agriculture and Higher Education. The Department did not receive any comments on the modifications.

Podiatrists Affiliated Credentialing Board (CR 06-056)

An order affecting chs. Pod 1 and 3, relating to waiver of continuing podiatric medical education. Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

These proposed rules will have not 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.

Summary of Comments by Legislative Review Committees

No comments were received.

Public Service Commission (CR 06-017)

An order repealing ch. PSC 98, relating to rules adopted to meet all requirements in s. 300.304 of the regulations of the Federal Price Commission. Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

The rules being repealed are not expected to affect small business as defined in s. 227.114 (1), Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

**Public Service Commission
(CR 06-046)**

An order affecting chs. PSC 7 and 172, relating to assessments attributable to acid deposition studies and monitoring activities, the regulation of certain wireless telecommunications providers, radio common carriers, the repeal of obsolete language and the updating of rule language to be in conformity with current drafting conventions. Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

The rules being repealed are not expected to affect small business as defined in s. 227.114 (1), Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

**Revenue
(CR 06-107)**

An order affecting ch. Tax 9, relating to cigarette and tobacco products tax bad debt deductions. Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

The proposed rule order doesn't have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

**Transportation
(CR 06-101)**

An order affecting ch. Trans 156, relating to the Automated Processing Partnership System Program; and to create ch. Trans 141, relating to requiring motor vehicle dealers to process vehicle titles and registrations electronically. Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

This proposed rule implements a law that applies to all licensed motor vehicle dealers, some of which are small

businesses. Effect on small business is that which results from the law. All licensed motor vehicle dealers are required to process title and registration applications, unless exempted by DOT. This rule exempts small dealers, which sell fewer than 4 vehicles a month or 48 vehicles per year, as DOT finds that these dealers likely do not have the computer hardware capability to engage in electronic processing. DOT has successfully operated a voluntary APPS program, in which small businesses (dealerships) participate in significant numbers. DOT has largely replicated that level of requirement in this mandatory program, as DOT has found this level is not onerous for small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

**Transportation
(CR 06-128)**

An order affecting ch. Trans 102, relating to proof of identity. Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

This rule making will have no effect on small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

**Workforce Development
(CR 06-138)**

An order affecting ch. DWD 277, relating to notice to home care consumers and workers. Effective 5-1-07.

Summary of Final Regulatory Flexibility Analysis

The rule affects small businesses as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **April 2007**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Agriculture, Trade and Consumer Protection

Ch. ATCP 156 (Entire chapter)

Controlled Substances Board

Ch. CSB 2

Ss. CSB 2.31 to 2.34

Insurance

Ch. Ins 9

S. Ins 9.25 (8)

S. Ins 9.27 (4)

Medical Examining Board

Ch. Med 1

S. Med 1.06 (3) (b)

Natural Resources

Ch. NR 1

S. NR 1.25

Ch. NR 243 (Entire chapter)

Podiatrists Affiliated Credentialing Board

Ch. Pod 1

S. Pod 1.02 (2)

S. Pod 1.09 (4)

Ch. Pod 3

S. Pod 3.01 (1) and (2)

S. Pod 3.02 (1)

Public Service Commission

Ch. PSC 7 (Entire chapter)

Ch. PSC 8

S. PSC 8.07 (8) to (10) and (12)

Ch. PSC 98 (Entire chapter)

Ch. PSC 104

S. PSC 104.01 (1)

S. PSC 104.04 (4)

Ch. PSC 113

S. PSC 113.0301 (10) (c)

Ch. PSC 115

S. PSC 115.02

Ch. PSC 133

S. PSC 133.01 (1)

Ch. PSC 134

S. PSC 134.13 (1)

Ch. PSC 136

S. PSC 136.01

S. PSC 136.04 (1)

Ch. PSC 164

S. PSC 164.01

Ch. PSC 165

S. PSC 165.01 (1)

S. PSC 165.081 (6) (c)

Ch. PSC 166

S. PSC 166.015

S. PSC 166.03

S. PSC 166.07

S. PSC 166.11

Ch. PSC 168

S. PSC 168.08

Ch. PSC 170 (Entire chapter)

Ch. PSC 171

S. PSC 171.03

S. PSC 171.05

Ch. PSC 172 (Entire chapter)

Revenue

Ch. Tax 9

S. Tax 9.70

Transportation

Ch. Trans 102

S. Trans 102.14 (3)

S. Trans 102.15 (3) (a), (4), (4m) (a), (e), (f) and (8)

Ch. Trans 141 (Entire chapter)

Ch. Trans 156

S. Trans 156.01 (2) and (3)

S. Trans 156.03 (1) (a)

S. Trans 156.04 (1) (c), (2) (a) to (d) and (f)

S. Trans 156.05 (1) (a), (b) and (2) to (4)

Workforce Development

Ch. DWD 277

S. DWD 277.19

Editorial corrections

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

Podiatrists Affiliated Credentialing Board**Ch. Pod 1**

S. Pod 1.02 (2)

S. Pod 1.09 (4)

Ch. Pod 3

S. Pod 3.01 (1)

S. Pod 3.02 (1) (intro.)

Public Service Commission**Ch. PSC 5**

S. PSC 5.04 (1) and (4)

S. PSC 5.05 (2)

Ch. PSC 6

S. PSC 6.03 (13)

Ch. PSC 98

S. PSC 98.04 (2), (4), (5), (6) and (8)

Ch. PSC 104

S. PSC 104.02 (1) (b) and (3)

Ch. PSC 108

S. PSC 108.01 (intro.)

Ch. PSC 130

S. PSC 130.08

Ch. PSC 132

S. PSC 132.06 (5)

Ch. PSC 133

S. PSC 133.05 (2)

S. PSC 133.06

Ch. PSC 134

S. PSC 134.01 (2)

S. PSC 134.0622 (2) (g)

Ch. PSC 135

S. PSC 135.163 (2)

Ch. PSC 136

S. PSC 136.04 (5)

Ch. PSC 160

S. PSC 160.02 (8) (e)

S. PSC 160.05 (2) and (4)

Ch. PSC 161

S. PSC 161.01 (1)

S. PSC 161.02 (5) and (7)

S. PSC 161.04 (1)

S. PSC 161.05 (3)

S. PSC 161.07 (3)

S. PSC 161.08

Ch. PSC 162

S. PSC 162.04 (2)

Ch. PSC 164

S. PSC 164.04 (1) (f)

Ch. PSC 165

S. PSC 165.01 (2)

S. PSC 165.066 (intro.)

S. PSC 165.10 (4)

Ch. PSC 168

S. PSC 168.09 (3)

Ch. PSC 169

S. PSC 169.04 (2)

Ch. PSC 171

S. PSC 171.02 (1)

S. PSC 171.06 (2)

Ch. PSC 179

S. PSC 179.03 (intro.)

Ch. PSC 183

S. PSC 183.01

S. PSC 183.02

S. PSC 183.04 (1) (b) and (c)

Ch. PSC 184

S. PSC 184.01

Ch. PSC 185

S. PSC 185.17 (3)

Ch. PSC 187

S. PSC 187.01

S. PSC 187.02 (3)

S. PSC 187.03

S. PSC 187.05 (1)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 189. Relating to the creation of the Commission on Reducing Racial Disparities in the Wisconsin Justice System.

Executive Order 190. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Lance Corporal Harry Timberman of the United States Marine Corps who lost his life during Operation Iraqi Freedom.

Executive Order 191. Relating to the creation of the Governor's Task Force on Global Warming.

Executive Order 192. Relating to the creation of the Office of Energy Independence.

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