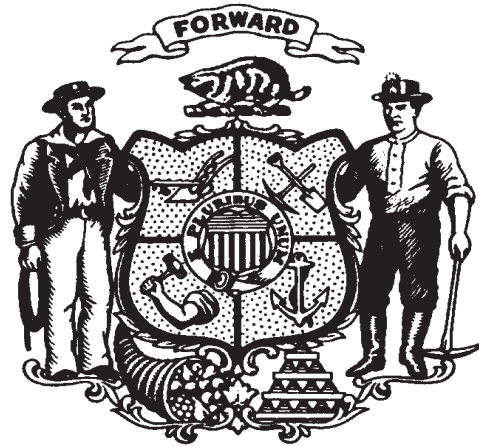


Wisconsin Administrative Register

No. 578



Publication Date: February 14, 2004

Effective Date: February 15, 2004



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

The 2001 – 02 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*[®] CD-ROM

Bound Volumes:

Prices for the 2001 – 02 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

Hard Cover <u>With Postage</u>	Hard Cover <u>Without Postage</u>	Soft Cover <u>With Postage</u>	Soft Cover <u>Without Postage</u>
\$151.00	\$144.00	\$126.00	\$120.00

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

WisLaw[®] CD-ROM:

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

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

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

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

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

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

Table of contents

Emergency rules now in effect.**Pages 3 to 8**

Agriculture, Trade and Consumer Protection:

Rules adopted revising **chs. ATCP 99, 100 and 101**, relating to the partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. **[First Appearance]**

Chiropractic Examining Board:

Rules relating to passing and retaking the practical examination.

Employment Relations Commission:

Rules adopted relating to increased filing fees for matters transferred from the Personnel Commission.

Gaming:

Rule relating to the method of computing the purses earned by all individuals at the Wisconsin racetracks.

Health and Family Services:

Management, Technology, Chs. HFS 1—

Rules relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR).

Medical Assistance, Chs. HFS 100—

Rules relating to the Medicaid Family Planning Demonstration Project.

Insurance:

Rules relating to small employer uniform group health application.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Rules relating to Chronic Wasting Disease (CWD).

Public Instruction:

Rules relating to high school equivalency diplomas and certificates of general educational development.

Revenue:

Rules relating to the 2004 assessment of agricultural land.

Workforce Development

Workforce Solutions, Chs. DWD 11—59

Rules relating to the child care local pass-through program.

Civil Rights, Chs. DWD 218—225

Rules relating to the transfer of personnel commission responsibilities to the equal rights division.

Public Works Construction, Chs. DWD 290—294

Rules relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Scope statements.**Page 9**

Commerce:

Rules relating to ch. Comm 3, stop work/stop use procedures.

Justice: Rules relating to ch. Comm 46, Petroleum Environmental Cleanup Fund interagency responsibilities.

Justice: Rules relating to enforcement of tobacco model statute.

Submittal of rules to the legislative council clearinghouse.

Page 10

Commerce: Rule affecting ch. Comm 32, relating to public employee safety and health.

Public Instruction: Rule affecting ch. PI 36, relating to public school inter–district open enrollment.

Workforce Development: Rules affecting ch. DWD 270, relating to child labor.

Rule–making notices.

Pages 11 to 15

Commerce: Public Employee Safety and Health, Ch. Comm 32
Hearing relating to public employee safety and health.

Public Instruction: Hearings to consider rules affecting ch. PI 36, relating to public school inter–district open enrollment.

Veterans Affairs: Hearing to consider a rule affecting ch. VA 1, relating to seeking recovery from a recipient who improperly receives a grant.

Workforce Development: Labor Standards, Chs. DWD 270–279
Hearing to consider rules relating to child labor.

Submittal of proposed rules to the legislature.

Page 16

Chiropractic Examining Board: CR 03–082 – Chs. Chir 2 to 6, 9 and 10

Commerce: CR 03–075 – Ch. Comm 5

Psychology Examining Board: CR 03–079 – Chs. Psy 1 and 5

Public Instruction: CR 03–102 – Ch. PI 5

Transportation: CR 03–123 – Ch. Trans 276

Rule orders filed with the revisor of statutes bureau.

Page 17

Commerce: CR 03–047 – Ch. Comm 18

Insurance: CR 03–083 – Ch. Ins 25

Medical Examining Board: CR 03–023 – Ch. Med 22

Natural Resources: CR 03–074 – Ch. NR 5

Public Instruction: CR 03–103 – Ch. PI 25

Regulation and Licensing: CR 02–103 – Ch. RL 2

Actions by the joint committee for review of administrative rules.

Page 18

Emergency rules now in effect

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection

Rules adopted creating **ss. ATCP 99.13, 99.25, 100.13 and 101.25**, relating to the partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors.

Finding of emergency

(1) The Wisconsin department of agriculture, trade and consumer protection currently administers an agricultural producer security program under ch. 126, Stats. (“producer security law”). This program is designed to protect agricultural producers from catastrophic financial defaults by contractors who procure agricultural commodities from producers.

(2) Under the producer security law, contractors pay annual assessments to an agricultural producer security fund (“the fund”). If a contractor defaults in payments to producers, the department may compensate producers from the fund. A contractor’s annual fund assessment is based, in large part, on the contractor’s annual financial statement. The producer security law spells out a formula for calculating assessments. However, the department may modify assessments by rule.

(3) The fund assessment formula is designed to require higher assessments of contractors who have weak financial statements (and may thus present greater default risks). But the statutory formula may generate unexpectedly high assessments in some cases, where a contractor’s strong

financial condition is temporarily affected by financial transactions related to a merger or acquisition. This may cause unfair hardship, and may unfairly penalize some mergers or acquisitions that actually strengthen security for agricultural producers. This may have an unnecessarily adverse impact on contractors, producers and Wisconsin economic development.

(4) The department may adjust assessments by rule, in order to ameliorate unintended results. But the normal rulemaking process will require at least a year to complete. The temporary emergency rule is needed to address this matter in the short term, and to provide relief for contractors already affected.

Publication Date: January 29, 2004

Effective Date: January 29, 2004

Expiration Date: June 27, 2004

Chiropractic Examining Board

Rules adopted revising **ch. Chir 2**, relating to passing and retaking the practical examination.

Finding of emergency

The Chiropractic Examining Board finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments described into effect prior to the time the amendments would take effect if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the National Board of Chiropractic Examiners as the board’s practical examination for determining clinical competence in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. The rule changes herein conform the terminology used in the board’s rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in s. Chir 3.02, although the national practical examination covers the practice areas described in the existing rule. The rule amendments to s. Chir 2.03 (2) (intro.) resolve this difference.

This order deletes the reference in the board’s current rule to passing “each part” of the examination. The national practical examination has one part and an applicant receives one grade for the part. In utilizing the national examination, the board approves the grading and grading procedures of the National Board of Chiropractic Examiners. Grade review procedures in s. Chir 2.09 are superfluous and the rule is repealed. The rule requiring reexamination is modified to avoid confusion over examination parts. The board is

proceeding with promulgating these rule changes through a proposed permanent rule-making order.

Publication Date: June 28, 2003
Effective Date: June 28, 2003
Expiration Date: November 25, 2003
Hearing Date: October 16, 2003
Extension Through: March 23, 2004

Employment Relations Commission

Rules adopted amending **ss. ERC 1.06 (1) to (3), 10.21 (1) to (5) and 20.21 (1) to (4)**, relating to increased filing fees.

Finding of emergency

The Employment Relations Commission finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

1. The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.

2. Effective July 26, 2003, 2003 Wisconsin Act 33 reduced the Employment Relations Commission's annual budget by \$400,000 in General Program Revenue (GPR) and eliminated 4.0 GPR supported positions. These reductions lowered the Employment Relations Commission's annual base GPR funding level and the number of GPR supported positions by more than 16%.

Act 33 also abolished the Personnel Commission and transferred certain of the Personnel Commission's dispute resolution responsibilities to the Employment Relations Commission.

3. 2003 Wisconsin Act 33 increased the Employment Relations Commission's Program Revenue (PR) funding and positions by \$237,800 and 2.0 PR positions respectively. The revenue to support these increases will be provided by increasing existing filing fees for certain dispute resolution services.

4. Unless the emergency rule making procedures of s. 227.24, Stats., are utilized by the Employment Relations Commission to provide the increased filing fee revenue needed to support the 2.0 PR positions, the Commission's ability to provide timely and expeditious dispute resolution services will be significantly harmed.

The emergency rules increase existing filing fees for Commission dispute resolution services in amounts necessary to fund 2.0 Program Revenue positions as authorized by 2003 Wisconsin Act 33.

Sections 111.09, 111.71, 111.94, 227.11 and 227.24., Stats., authorize promulgation of these emergency rules.

Publication Date: August 25, 2003
Effective Date: September 15, 2003
Expiration Date: February 12, 2004
Hearing Date: November 20, 2003
Extension Through: April 11, 2004

Gaming

Rules adopting repealing **s. Game 23.02 (2)** of the Wisconsin Administrative Code, relating to the computation of purses.

Finding of emergency

The Wisconsin Department of Administration finds that an emergency exists and that a rule is necessary in order to repeal an existing rule for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Section Game 23.02 (2) was created in the Department's rulemaking order (03-070). The Department is repealing this section due to the unforeseen hardship that it has created on the Wisconsin racetracks. This financial hardship presents itself in multiple ways. The racetracks rely on an outside vendor to compute the purses earned by all individuals. The vendor produces a similar system for most greyhound racetracks in the country. The purses are generated by the amount of money wagered on all races over a period of time. The current system does not provide for bonus purses to be paid out based upon the residency of certain owners. The current system would have to be reprogrammed at a significant cost to the racetracks. Although the bonus purses could be calculated and paid without a computer, it would create excessive clerical work that would also be costly to the racetracks.

Additionally, Geneva Lakes Greyhound Track committed to paying a minimum payout of purses to the greyhound and kennel owners that race in Delavan. Geneva Lakes Greyhound Track will supplement out of their own money any purse amount that does not exceed the minimum payout. As a result of paying the bonus purse to Wisconsin owned greyhounds, the variance between the actual purse and the minimum purse is increased and the financial liability to the racetrack is increased. Since this supplement is voluntary, the racetrack has indicated that it will probably have to cease the supplemental purses to the participants. This would result in reduced payments to the vast majority of the kennel owners and greyhound owners participating at the racetrack.

In creating this rule, the Department did not intend to create the disadvantages caused by this rule.

Publication Date: January 8, 2004
Effective Date: January 8, 2004
Expiration Date: June 6, 2004

Health and Family Services (Management, Technology, Chs. HFS 1—)

Rules adopted revising **ch. HFS 15**, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR).

Exemption from finding of emergency

The legislature by section 9124 (3) (b) of 2003 Wisconsin Act 33 provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Health and Family Services

2003 Wisconsin Act 33 modified section 50.14 of the Wisconsin Statutes, relating to assessments on occupied,

licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR.)

Under section 50.14 of the Wisconsin Statutes, nursing facilities (nursing homes and ICF-MRs) are assessed a monthly fee for each occupied bed. Facilities owned or operated by the state, federal government, or located out of state are exempt from the assessment. Beds occupied by a resident whose nursing home costs are paid by Medicare are also exempt. The rate, specified in section 50.14 (2) of the statutes, was \$32 per month per occupied bed for nursing homes and \$100 per month per occupied bed for ICF-MRs.

2003 Wisconsin Act 33 made the following changes to section 50.14:

1. It broadened the scope of which types of long-term care facilities must pay a monetary assessment to the Department by:

- eliminating exemptions from being subject to the assessments of facilities owned or operated by the state or federal government, and beds occupied by residents whose care is reimbursed in whole or in part by medicare under 42 USC 1395 to 1395ccc; and

- eliminating the exclusion of unoccupied facility beds from facility bed count calculations.

2. It increased the per bed fee limit the Department may charge subject ICF-MRs, from \$100 per bed to \$435 per bed in fiscal year 2003-04 and \$445 per bed in fiscal year 2004-05.

3. It increased the per bed fee limit the Department may charge subject nursing homes, from \$32 per bed to \$75 per bed.

4. It establishes the requirement that amounts collected in excess of \$14.3 million in fiscal year 2003-04, \$13.8 million in fiscal year 2004-05, and, beginning July 1, 2005, amounts in excess of 45% of the amount collected be deposited in the Medical Assistance Trust Fund.

5. It specifies that facility beds that have been delicensed under section 49.45 (6m) (ap) 1. of the statutes, but not deducted from the nursing home's licensed bed capacity under section 49.45 (6m) (ap) 4. a., are to be included in the number of beds subject to the assessment.

In response to these statutory changes, by this order, the Department is modifying chapter HFS 15 accordingly.

The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: July 28, 2003
Effective Date: July 28, 2003
Expiration Date: December 25, 2003
Hearing Date: October 15, 2003
Extension Through: March 1, 2004

Health and Family Services (Medical Assistance, Chs. HFS 100—)

Rules adopted revising **chs. HFS 101 to 107**, relating to the Medicaid Family Planning Demonstration Project.

Finding of emergency

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

On June 25, 1999, the Department submitted a request for a waiver of federal law to the Centers for Medicare and Medicaid Services (CMS), the agency within the United States Department of Health and Human Services that controls states' use of Medicaid funds. On June 14, 2002, the Centers for Medicaid and Medicare granted the waiver, effective January 1, 2003. The waiver allows the state to expand Medicaid services by providing coverage of family planning services for females of child-bearing age who would not otherwise be eligible for Medicaid coverage. Under the waiver, a woman of child-bearing age whose income does not exceed 185% of the federal poverty line will be eligible for most of the family planning services currently available under Medicaid, as described in s. HFS 107.21. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin.

Department rules for the operation of the Family Planning Demonstration Project must be in effect before the program begins. The program statute, s. 49.45 (24r) of the statutes, became effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement the Family Planning Demonstration Project not later than July 1, 1998, or the effective date of the waiver, whichever date was later. After CMS granted the waiver, the Department determined that the Family Planning Demonstration Project could not be implemented prior to January 1, 2003, and CMS approved this starting date. Upon approval of the waiver, the Department began developing policies for the project and subsequently the rules, which are in this order. The Department is publishing the rules by emergency order so the rules take effect in February 2003, rather than at the later date required by promulgating permanent rules. In so doing, the Department can provide health care coverage already authorized by CMS as quickly as possible to women currently not receiving family planning services and unable to pay for them. The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: January 31, 2003
Effective Date: January 31, 2003*
Expiration Date: June 30, 2003
Hearing Dates: April 25 & 28, 2003

* The Joint Committee for Review of Administrative Rules suspended this emergency rule on April 30, 2003

Insurance

The office of the commissioner of insurance adopts an order to create **s. Ins 8.49**, Wis. Adm. Code, relating to Small Employer Uniform Group Health Application.

Finding of emergency

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

The rule and the uniform small employer application are required by statute to be available by August 1, 2003. Due to implementation of 45 CFR 164 of HIPAA privacy provisions for covered entities, including health plans, and the commissioner's efforts to obtain clarification regarding authorization for release of personally identifiable health information provisions from the Office of Civil Rights a Division of Centers Medicare & Medicaid Services charged

with enforcement of the privacy portions of HIPAA, it is not possible to complete the permanent rule process in time to meet the statutory requirement.

The first emergency rule was submitted and published on July 31, 2003, to meet the statutorily imposed deadline. However, subsequent to submission of the permanent rule by the Office, the legislative committees having jurisdiction over the rule requested the Office to modify the permanent rule. The notice requesting modification was received by the Office on December 18, 2003, less than 30 days from the date the emergency rule was set to expire.

Since it will not be possible to have the permanent rule finalized by December 29, 2003, and JCRAR was unable to grant an extension on the emergency rule, this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare.

A hearing on the permanent rule was held on July 11, 2003, in accordance with s. 227.17, Stats., and the commissioner has had benefit of reviewing public comments and the clearinghouse report prior to issuing this emergency rule. A hearing on this emergency rule will be noticed and held within 45 days in accordance with ch. 227, Stats.

Publication Date: January 7, 2004
Effective Date: January 7, 2004
Expiration Date: June 5, 2004

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

Rules were adopted revising **ch. NR 10**, relating to Chronic Wasting Disease (CWD) in Wisconsin.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule – making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

Publication Date: September 11, 2003
Effective Date: September 11, 2003
Expiration Date: February 8, 2004
Hearing Date: October 13, 2003
Extension Through: April 7, 2004

Public Instruction

Rules were adopted revising **ch. PI 5**, relating to high school equivalency diplomas and certificates of general educational development.

Finding of emergency

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

1. The GED Testing Service modified the GED test content and the standard score scale used to determine passing scores dramatically from the previous test series causing an inconsistency with the current scoring requirements under ch. PI 5. The emergency rule reflects the current national GED test score of not less than 410 on each of the five tests, with an average of 450 on the five tests in the battery.

2. 2003 Wisconsin Act 33, the 2003–2005 biennial budget, eliminated general purpose revenue (GPR) used to support GED program administration and created a provision allowing the state superintendent to promulgate rules establishing fees for issuing a GED certificate or HSED. Act 33 presumed that GED program costs previously funded by GPR would be paid for by revenue fees generated as of January 1, 2004.

The department is issuing this emergency rule in order to ensure compliance with the more rigorous score standards and to ensure adequate funding for the program.

A corresponding permanent rule, Clearinghouse Rule 03–102, was developed with public hearings held on December 11 and 15, 2003. The department has had the benefit of reviewing public comments and the Clearinghouse Report prior to issuing this emergency rule.

Publication Date: January 2, 2004
Effective Date: January 2, 2004
Expiration Date: May 31, 2004
Hearing Date: February 13, 2004

Revenue

Rule adopted revising **s. Tax 18.07**, relating to the 2004 assessment of agricultural land.

Finding of emergency

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Pursuant to s. 70.32 (2r) (c), Stats., the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5–year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 5–year average interest rate for a medium–sized, 1–year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three–year lag in determining the 5–year average. Thus, the 2003 use value is based on the 5–year average corn price, cost and yield for the 1996–2000 period, and the capitalization rate is based on the 5–year average interest rate for the 1998–2002 period. The 2004 use value is to be based on the 5–year average corn price, cost and yield for the 1997–2001 period, and the capitalization rate is to be based on the 1999–2003 period.

The data for the 1997–2001 period yields negative net income per acre due to declining corn prices and increasing

costs of corn production. As a result, reliance on data for the 1997–2001 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2004.

Publication Date: October 3, 2003
Effective Date: October 3, 2003
Expiration Date: March 1, 2004
Hearing Date: December 16, 2003

Workforce Development (Workforce Solutions, Chs. DWD 11–59)

Rules adopted revising **ch. DWD 59**, relating to the child care local pass-through program.

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:

2003 Wisconsin Act 33 allocated federal child care funds in a manner that assumes an increase in the match rate paid by local governments and tribes receiving grants under the child care local pass-through program. Budget documents prepared by the Legislative Fiscal Bureau specify that the budget option chosen requires that local governments and tribes contribute matching funds at a rate of 52% in 2003–2004, and slightly higher in 2004–2005. Chapter DWD 59 currently requires a minimum match rate of the state's federal medical assistance percentage rate, which is approximately 42%. The match rate for the pass-through program must be increased immediately so Wisconsin does not lose valuable federal child care dollars. These dollars help preserve the welfare of the state by ensuring that low-income families have access to quality affordable child care.

2003 Wisconsin Act 33 also reduced funding to the child care local pass-through program by 86%. Chapter DWD 59 requires a 2-step grant process wherein current grantees receive up to 75% of the funds under a noncompetitive process for 2 years following the receipt of the initial grant, and can apply, along with any eligible jurisdiction in the state, for the remaining 25% as initial grantees. The dramatically reduced funding for the pass-through program renders the current Chapter DWD 59 requirement to fund continuing grants while reserving funds for a new statewide request for proposals unwieldy, wasteful, and obsolescent. If the current process remains in place, it would not only waste state and local staff resources on extremely low-value administrative processes, it would waste public funds at a time when they are in short supply. This could further undermine state and local efforts to ensure a reasonable supply of reliable and quality child care for families who depend on this service in order to work. This emergency rule allows all available dollars to be used for continuing grants if there is insufficient funding to provide continuing grants of at least 50% of the eligible grantees' initial grant levels from the previous 2 grant cycles.

These changes are ordered as an emergency rule so they are effective before the new grant cycle begins on October 1, 2003. Delaying the next grant cycle until the permanent rule is effective is not a viable option because local governments need to know whether they will receive continued funding or will be forced to dismantle ongoing programs and lay-off

staff when the current grant cycle ends on September 30. Also, federal law requires that the federal funds be matched and spent within the federal fiscal year of October 1 to September 30.

Publication Date: October 7, 2003
Effective Date: October 7, 2003
Expiration Date: March 5, 2004
Hearing Date: November 12, 2003

Workforce Development (Civil Rights, Chs. DWD 218–225)

Rules adopted repealing **chs. PC 1, 2, 4, 5 and 7** and revising **chs. DWD 218 and 225** and creating **ch. DWD 224**, relating to the transfer of personnel commission responsibilities to the equal rights division.

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:

2003 Wisconsin Act 33 transfers the responsibility for processing certain employment-related complaints against state respondents from the Personnel Commission (PC) to the Equal Rights Division (ERD) effective upon publication of 2003 Wisconsin Act 33. The ERD needs rules governing the procedures for processing these complaints effective immediately to ensure that service is not seriously delayed by this administrative change. The PC expects to transfer approximately 200 pending cases to ERD immediately.

2003 Wisconsin Act 33 transfers responsibility from the PC to ERD for 9 different types of employment-related complaints against state respondents. The ERD has had responsibility for processing complaints against nonstate respondents for 8 of the 9 types of complaints. This order makes minor amendments to existing rules to include state respondents and creates a new rule chapter on whistleblower protection for state employees, which is the one issue that ERD has not previously handled because the law does not apply to nonstate respondents. The newly-created whistleblower rules are similar to the existing fair employment rules.

A nonstatutory provision of 2003 Wisconsin Act 33 transfers existing PC rules to ERD. This order repeals those rules. Adopting the PC rules would result in different procedures for cases against state respondents and nonstate respondents for no logical reason. The dual system would be difficult to administer and confusing to complainants, many of whom are pro se. Even if ERD adopted the PC rules, an emergency rule would be necessary to remove confusing irrelevant and obsolete information.

This order repeals the PC rules and revises ERD rules by emergency rule to ensure that a clear, logical, and fair process is in place for handling the newly-transferred responsibilities for protecting Wisconsin's workforce from discrimination and retaliation.

Publication Date: August 5, 2003
Effective Date: August 5, 2003
Expiration Date: January 2, 2004
Hearing Date: October 27, 2003
Extension Through: March 1, 2004

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

Rules adopted amending ss. **DWD 290.155 (1), 293.02 (1), and 293.02 (2)**, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

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 Department of Workforce Development is acting under its statutory authority to adjust thresholds for the application of prevailing wage laws on state or local public works projects and the application of payment and performance assurance requirements for a public improvement or public work. The thresholds are adjusted in proportion to any change in the construction cost index since the last adjustment.

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. The department is proceeding with this emergency rule to adjust the thresholds of the application of the prevailing wage rates to avoid 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. The department is proceeding with this emergency rule to adjust the thresholds of the application of the payment and performance assurance requirements in s. 779.14, Stats., to avoid imposing an additional administrative burden on contractors for the same reason. Adjusting the thresholds by emergency rule will also ensure that the adjustments are effective on a date certain that is prior to the time of year that the relevant determinations are generally made.

Publication Date: December 18, 2003
Effective Date: January 1, 2004
Expiration Date: May 30, 2004
Hearing Date: February 19, 2004

Scope statements

Commerce

Subject

Objective of the rule. To establish and specify stop work and stop use (red tag) enforcement procedures in the administrative code for programs regulated by the Division of Safety and Buildings within the Department of Commerce. The purpose of these procedures is to establish another tool to obtain code compliance.

Policy analysis

There are currently no existing policies or administrative rules relating to stop work and stop use (red tag) enforcement procedures for the Division of Safety and Buildings. This rule project will propose new policies relating to Department stop work/stop use orders, and it will analyze policy alternatives relating to Department orders to stop all work at a given construction site, to stop work only on a specific system or installation, and to stop use of a certain device or equipment.

The alternative of not developing the rules would result in the continued inability of the Division of Safety and Buildings to gain compliance when inspections discover conditions that are dangerous to life or health.

Statutory authority

Section 101.02 (6) (c) and (d), and (15) (a) and (j).

Staff time required

The Department estimates that it will take approximately 100 hours to develop this rule. This time includes drafting the rule and processing the rule through public hearings and legislative review. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

associated with cleaning up a discharge of petroleum product from a storage system or home oil tank system. The Department also oversees remediation of petroleum product discharges at medium– and low–risk cleanup sites.

As directed under s. 101.143 (2) (h) and (i), Stats., the proposed rules would (1) require submittal of quarterly summaries of costs incurred with respect to a discharge for which a claim is intended to be submitted but for which a final claim has not been submitted, (2) specify formats for submitting the quarterly summaries, (3) specify the review procedures that must be followed by employees of the Department of Natural Resources and the Department of Commerce in reviewing the quarterly summaries, and (4) specify procedures for annual reviews that include application of the risk–screening criteria in s. Comm 46.06 to determine the risk posed by discharges that are the subject of the remedial actions.

The only alternative to promulgating these rules would be to remain in noncompliance with the corresponding directives in s.101.143 (2) (h) and (i), Stats.

Statutory authority

Section 101.143 (2) (h) and (i), Stats.

Staff time required

The Department estimates approximately 200 hours will be needed to develop the rules. This time includes drafting the changes and processing them through public hearings, legislative review, and adoption. The Department will assign existing staff to develop the rules, and no other additional resources will be needed.

Justice

Subject

Enforcement of tobacco model statute.

Policy analysis

2003 Wisconsin Act 73 gave the Department of Justice a number of new powers to enforce the tobacco model statute, s. 895.10, Stats. Tobacco product manufacturers must file detailed certifications concerning the products they make, and the Attorney General must maintain a directory of the manufacturers who have current and accurate certifications and who are otherwise compliant with Wisconsin's tobacco model statute. The act also allows the Attorney General to require certifications and escrow payments quarterly. Promulgation of the rule will set forth the standards for implementing these new powers and duties.

Statutory authority

Section 895.12 (9), Stats.

Staff time required

30 hours.

Commerce

Subject

Objective of the rule. The purpose of this rule is to comply with directives in section 101.143 (2) (h) and (i), Stats., to jointly promulgate, with the Department of Natural Resources, certain requirements that (1) are designed to facilitate effective and cost–efficient administration of the Petroleum Environmental Cleanup Fund Award (PECFA) program, as established under sections 101.143 and 101.144, Stats.; and (2) specify procedures for annual reviews of remedial action plans, and procedures to be used by employees of the Department of Commerce and the Department of Natural Resources while those remedial actions are being conducted.

Policy analysis

The Department of Commerce administers the PECFA program by reimbursing property owners for eligible costs

Submittal of rules to legislative council clearinghouse

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

Commerce

Rule Submittal Date

On January 23, 2004, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Comm 32, relating to public employee safety and health.

Agency Procedure for Promulgation

The department will hold a public hearing on February 26, 2004.

Contact

Ronald Acker
608 267-7907

Public Instruction

Rule Submittal Date

On January 21, 2004, the Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. PI 36, relating to public school inter-district open enrollment.

Agency Procedure for Promulgation

Public hearings are scheduled for March 16, 17, 18 and 23, 2004.

The Division for Finance and Management is primarily responsible for promulgation of this rule.

Contact

If you have questions regarding this rule, you may contact:

Mary Jo Cleaver
Open Enrollment Consultant
608 267-9101

Workforce Development

Rule Submittal Date

On January 27, 2004, the Department of Workforce Development submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. DWD 270, relating to child labor.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 4, 2004.

The organizational unit responsible for the promulgation of the proposed rules is the DWD Equal Rights Division.

Contact

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

Rule-making notices

Notice of Hearing

Commerce

(Public Employee Safety and Health, Ch. Comm 32)

[CR 04-009]

NOTICE IS HEREBY GIVEN that pursuant to s. 101.055 (3), Stats., the Department of Commerce will hold a public hearing on proposed rules relating to public employee safety and health.

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
February 26, 2004 (Thursday) 10:00 a.m.	Room 3C Thompson Commerce Center 201 West Washington Avenue Madison

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **March 12, 2004**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Ronald Acker, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at racker@commerce.state.wi.us.

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

Copies of Rule and Contact Person

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

Analysis Prepared by the Department of Commerce

Statutory Authority: s. 101.055 (3), Stats.

Statutes Interpreted: s. 101.055 (3), Stats.

The Department of Commerce proposes an order to amend ss. Comm 32.003 (2), 32.35 (1), 32.38 (1), and 32.50 (1); to repeal and recreate s. Comm 32.50 Table 32.50-1; and to create ss. Comm 32.11 and 32.39 (1) Note, relating to public employee safety and health.

The Department of Commerce is responsible for adopting standards to protect the safety and health of public employees

in the state of Wisconsin. The adopted standards must provide protection at least equivalent to that afforded to private sector employees under standards administered and enforced by the federal Occupational Safety and Health Administration (OSHA). Chapter Comm 32 currently contains general safety and health standards for all public employees through the incorporation by reference of several OSHA standards. Chapter Comm 32 also contains requirements that add to or modify the OSHA standards.

The proposed rules consist of revisions in ch. Comm 32, including the incorporation by reference of the new OSHA standards issued since the last chapter update in 2002. Those standards cover illness and injury reporting; signs, signaling and barricades; shipyard employment; exit routes, emergency action plans and fire prevention plans; and materials handling and storage.

The proposed rules also contain new requirements that more clearly articulate the need for the development and implementation of a safety and health program.

The proposed rules have been developed with the assistance of the Public Safety Advisory Council. The members of that citizen advisory council are as follows:

<u>Name</u>	<u>Representing</u>
Ken Blomberg	Wis. Rural Water Association
Jose Bucio	Wisconsin State AFL-CIO
Vance Forrest	Wisconsin Counties Association
Boyd Garey	DOA State Risk Management
David Hanneman	Wisconsin Education Association Council
Ron Kent	American Federation of State, County & Municipal Employees
Dave Kodel	Wisconsin Alliance of Cities
James Kropp	DOA Division of State Facilities
Don Lythjohan	Madison Metropolitan Sewerage District
Thomas Rowe	City of Milwaukee
Richard Stadelman	Wisconsin Towns Association
Ernest Stracener	University of Wisconsin System
Dennis Tweedale	League of Wis. Municipalities

Initial Regulatory Flexibility Analysis

The proposed rules will not affect any small businesses as defined in s. 227.114 (1) (a), Stats. The proposed rules apply to public sector employers and employees.

Notice of Environmental Analysis

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

exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate

The Safety and Buildings Division currently administers and enforces the provisions of ch. Comm 32 as part of the public sector safety and health program. The proposed rules update the existing administrative rules now being enforced, and the new requirements should not significantly affect costs or revenues. Therefore, the proposed rules will not have any fiscal effect on the Division.

At the local government level, there should be no significant fiscal effect. Some of the new requirements may result in additional costs in time and equipment for some local governments; however, these costs should be minimal.

Notice of Hearings

Public Instruction

[CR 04–008]

NOTICE IS HEREBY GIVEN That pursuant to ss. 118.51 (5) (d) and 227.11 (2) (a), Stats., and interpreting ss. 118.51 and 121.81, Stats., the Department of Public Instruction will hold public hearings as follows to consider the amending of Chapter PI 36, relating to public school inter–district open enrollment. The hearings will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
March 16, 2004 4:30 – 6:30 p.m.	Chippewa Falls CESA 10 725 W. Park Avenue Office
March 17, 2004 4:30 – 6:30 p.m.	Wausau Longfellow Administration Center 415 Seymour Street Nicholson Board Room
March 18, 2004 4:30 – 6:30 p.m.	Wauwatosa Wauwatosa School District 12121 W. North Avenue Conference Room A
March 23, 2004 4:30 – 6:30 p.m.	Madison GEF 3 Building 125 South Webster St. Room 041

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Mary Jo Cleaver, Open Enrollment Consultant, at (608) 267–9101 or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule and fiscal note are available on the internet at: <http://www.dpi.state.wi.us/dpi/dfm/pb/openen.html> and <http://www.dpi.state.wi.us/dpi/dfm/pb/openfiscal.html>, respectively. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson,
Administrative Rules and Federal Grants Coordinator
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **March 29, 2004**, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Department of Public Instruction

1997 Wisconsin Act 27 created the full–time inter–district public school open enrollment program. Since that time, several laws affecting the program have been enacted and administrative procedures have been developed for the efficient operation of the program. This proposed order updates and amends ch. PI 36 to address statutory changes to the program, to provide clarification in some areas and to amend administrative procedures, including removal of some unnecessary reporting.

1997 Wisconsin Act 164 made significant changes to special education law. The proposed order brings the rules into conformity with Act 164, including changing the terms “handicapped child” and “child with exceptional educational needs” to be “child with a disability,” and eliminating reference to screening children for disabilities and multi–disciplinary teams.

1999 Wisconsin Act 117 amended the open enrollment law to provide that pupils could open enroll for 4–year–old kindergarten only if the pupil’s resident school district also provides 4–year–old kindergarten and only if the pupil is eligible for 4–year–old kindergarten in the resident school district. This order incorporates the provisions of Act 117 into the rules.

1999 Wisconsin Act 118 provided that a pupil could apply to no more than three nonresident school districts in any application period. The proposed rules provide that if a pupil applies to more than three school districts in any application period, any applications submitted during that application period may be declared invalid by the resident and/or each nonresident school district may declare the application it received invalid.

In addition, the proposed rules clarify that a resident school district must be indicated on the application form, that the resident school district to be indicated on the application form is the resident district in which the pupil will reside in the first year of open enrollment, and that the pupil may not indicate multiple resident school districts. If the pupil is not a resident of the district indicated on the form on the immediately following third Friday in September, the open enrollment is void.

2003 Wisconsin Act 55 permits nonresident school districts to establish waiting lists of pupils who have been denied due to lack of space and requires the department to adopt administrative rules to implement and administer the provision. The proposed rules require school boards that wish to establish waiting lists to adopt policies prior to the first day of the application period to which the waiting list will first apply. The policies must include all of the following:

- A procedure to establish a numbered waiting list of all applicants, following its acceptance and rejection criteria and the required random selection process.
- A procedure for notifying parents if the pupil has been accepted from the waiting list. The notification must include:

– Notice that the pupil has been accepted from the waiting list and of the school or program to which the pupil will be assigned.

– A date by which the parent must notify the board whether the pupil will attend the nonresident school district and the procedures to follow. The board must provide seven days for the parent to respond and may provide that if the parent does not respond within the specified time period, the acceptance will be rescinded and the space will be offered to the next applicant on the waiting list.

The last date on which the school board may offer applicants a space from the waiting list is the third Friday in August.

The proposed rules require that the denial notice must include the pupil's place on the waiting list.

Clarifications and Amendments to Administrative Procedures:

- Clarify that pupils not enrolled in a Wisconsin public school district during the application period may apply for open enrollment and must enroll in the resident school district after being approved and prior to attendance in the nonresident school district.
- Provide that a nonresident school district must notify the parent of an open enrolled pupil prior to the first day of the application period if the pupil will be required to reapply because the board's policy requires reapplication at the beginning of middle school, junior high or high school. Clarify that the resident school board does not act on such a reapplication.
- Permit, but not require, a nonresident school board to determine that a pupil may not open enroll if the parent has not provided the required notice of intent to attend.
- Eliminate the requirement that a parent must submit an application for reimbursement of transportation expenses by April 1 to be ensured of reimbursement in the following school year.
- Provide that after the pupil has begun attending a nonresident school district (at least until the third Friday in September of the first year of open enrollment), the pupil may continue to attend the nonresident school district without reapplication (except as permitted in the statute) even if the pupil moves to a different school district. Provide that the resident school district on the third Friday in September is considered the resident school district for the entire school year.
- Clarify that if a pupil withdraws from the nonresident school district or enrolls in and attends another public school district, private school or home–based private educational program, the open enrollment ends and the pupil may not resume open enrollment without submitting a new application in the next open enrollment application period. Provide that if a pupil has not attended the nonresident school district on or before the third Friday in September, the open enrollment ends. Also provide that if a nonresident school district expels an open enrolled pupil, it may also terminate the pupil's open enrollment.
- The proposed rules eliminate requirements for school boards to send copies to the department of various actions that do not affect the aid adjustment nor are required to be reported to the legislature.
- Clarify what actions must be reported to the resident school district and the department. These are actions that would affect the pupil's open enrollment status and/or the aid adjustment.

- Provide that school board open enrollment policies must be adopted or revised prior to the beginning of the application period to which they will first apply.
- Eliminate the requirement to send decisions in open enrollment appeals by certified mail.

Fiscal Estimate

For the most part, the rule modifications reflect current practice and should not have a fiscal effect on school districts.

Costs to the department may be reduced because of the elimination of appeal decisions being sent by certified mail. The department could save at least \$1,750 per year assuming 250 appeals are sent annually to both the appellant and school district administrator by certified mail at \$3.50 each. Costs associated with staff time necessary to prepare the certified mailings will also be reduced. These savings are indeterminate.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Notice of Hearing

Veterans Affairs

[CR 04–003]

NOTICE IS HEREBY GIVEN That the Department of Veterans Affairs will hold a public hearing on the **27th day of February, 2004**, at 11:05 a.m., in the 8th floor board room at 30 West Mifflin Street in Madison, Wisconsin.

Analysis Prepared By The Department Of Veterans Affairs

Statutory authority: s. 45.35 (3), Stats.

Statutes interpreted: ss. 45.25, 45.396, and 45.397, Stats.

The creation of s. VA 1.20 will enable the department to seek recovery from a recipient who improperly receives a grant under ss. 45.25, 45.396, and 45.397, Stats. Under current law, the department has the authority to recover and suspend state veterans' benefits whenever an applicant willfully provides false or fraudulent information on an application, with the intent of receiving benefits. The proposed language would allow the department to recover educational grant benefits that were erroneously paid for reasons other than the willful attempt to fraudulently obtain benefits.

Initial Regulatory Flexibility Analysis

This rule is not expected to have any adverse impact upon small businesses.

Fiscal Estimate

Based upon the annual average of potential recoveries over FY00–FY03, it is expected that the department may be able to annually reduce expenditures by \$14,100.

Copies of Rule and Contact Person

A copy of the proposed rules and the full fiscal estimate may be obtained by contacting:

John Rosinski
Wisconsin Department of Veterans Affairs
PO Box 7843
Madison, WI 53707–7843

For questions concerning the hearing, contact:

John Rosinski (608) 266–7916

Notice of Hearing
Workforce Development
(Labor Standards, Chs. DWD 270–279)
[CR 04–010]

NOTICE IS HEREBY GIVEN that pursuant to ss. 103.66 and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to child labor.

Hearing Information

March 4, 2004 GEF 1 Building, Room B103
(Thursday) 201 E. Washington Avenue
1:30 p.m. MADISON

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 that may make communication or accessibility difficult 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.

Contact Information

The proposed rules are available on the DWD web site at <http://www.dwd.state.wi.us/dwd/hearings.htm>.

A paper copy may be obtained at no charge by contacting:

Elaine Pridgen, Office of Legal Counsel
Dept. of Workforce Development
201 E. Washington Avenue
P.O. Box 7946
Madison, WI 53707–7946
(608) 267–9403 or pridgel@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than **March 5, 2004**, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.66 and 227.11, Stats.

Statutes interpreted: Section 103.64 to 103.82, Stats.

Section 103.66, Stats., provides that the department may determine reasonable classifications of employment, places of employment, maximum hours of employment per day and per week, maximum days of employment per week, hours at which employment may begin and end and the duration of lunch and other rest periods, and prohibited hazardous employment as necessary to protect the life, health, safety, or welfare of minors. The proposed rule repeals and recreates the existing classifications in Chapter DWD 270 with some substantive changes and some reorganization solely to clarify the rule language.

Hazardous employment. Proposed substantive changes to the provisions on minimum ages for hazardous employment and prohibited occupations or places of employment prejudicial to the life, health, safety, or welfare of minors include the following:

- No minor may be employed as an exotic dancer, regardless of whether liquor is sold in the establishment.
- No minor may work as a bouncer, crowd controller, or identification checker in establishments where liquor is present.
- No minor may work on or about a roof. The current rule prohibits minors from working in the installation of roofs but allows minors to work on or about a roof for other purposes. The proposed rule prohibits any work on a roof, including carpentry and metal work, gutter and downspout work, installation and servicing of television and communication equipment such as cable and satellite dishes, installation and servicing of heating and air conditioning equipment, and any similar work that is required to be performed upon or about roofs.
- The provision allowing occasional and incidental driving by minors is amended to coincide with federal law, as found in the “Drive for Teen Employment Act” (Public Law 105–334, 29 USC 213(c)(6)). The current rule provides that the driving must be during daylight hours, the minor must hold a driver’s license for the type of driving involved and must have completed a state–approved driver education course, the automobile or truck does not exceed 6,000 pounds, and the vehicle is equipped with a seat belt for the driver and for each helper, and the employer has instructed each minor that such belts must be used. In addition to these provisions, the proposed changes include the following:
 - The minor must be at least 17 years old. The current rule does not contain a minimum age.
 - The driving may be no more than one–third of an employee’s work time in any workday and no more than 20% of any employee’s work time in any work week.
 - The driving takes place within a 30 mile radius of the minor’s place of employment.
 - The driving does not involve the towing of vehicles; route deliveries or route sales; transportation for hire of property, goods, or passengers; urgent, time–sensitive deliveries; or the transporting at any time of more than 3 passengers, including the employees of the employer.
 - The driving performed by the minor does not involve more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the minor’s employer to a customer or for the purpose of transporting passengers other than the employees of the employer.
- An exception to the general prohibition against minors working in any occupation involved with paper–products machines is created to coincide with federal law at Public Law 104–174, 29 USC 213(c)(5)(A). The exception in federal law and the proposed rule provides that 16– and 17–year–old minors may load materials into, but not operate or unload, a scrap paper baler or a paper box compactor only if all of the following conditions are met:
 - The scrap paper baler or paper box compactor meets the applicable ANSI standard.
 - The scrap paper baler or paper box compactor includes an on–off switch incorporating a key–lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older.
 - The on–off switch of the scrap paper baler or paper box compactor is maintained in an off position when the machine is not in operation.
 - The employer posts a notice on the scrap paper baler or paper box compactor in a prominent position and easily visible to any person loading, operating, or unloading the machine stating that: “The scrap paper baler or compactor meets the industry safety standard applicable to the

machine, Standard ANSI Z245.5–1990 for scrap paper balers and Standard ANSI Z245.2–1992 for paper box compactors. Sixteen– and 17–year–old employees may only load the scrap paper baler or paper box compactor. No employee under the age of 18 may operate or unload the scrap paper baler or paper box compactor.”

- The definition of explosives is revised in the subsection prohibiting minors from working with certain explosives. The current rule refers to explosives designated by the Interstate Commerce Commission, which was abolished in 1995. The proposed rule refers to explosives designated by the Bureau of Alcohol, Tobacco and Firearms to be covered by 18 USC 841(d), relating to importation, manufacture, distribution, and storage of explosive materials.
- An exception is added to the prohibition against minors operating hoists to clarify existing law. Sixteen– and 17–year–old minors may operate floor jacks, service jacks, hand jacks, drive–on lifts, and arm lifts used in conjunction with repairing or servicing motor vehicles. No minor under 16 years of age may operate a motor vehicle lift of any type or work in a pit underneath a motor vehicle.

Hours minors may work. An exception to the requirement that minors 12 and 13 years of age may not be employed more than 6 days per week is created for minors working in farming. The latest time that minors 16 and 17 years of age may work on days not preceding school days is changed from 12:30 a.m. to 12 midnight. Students who are enrolled in a private or public school but receiving instruction at home through special arrangement may work the same hours as if they were attending the public school. Students enrolled in a charter school may not work during hours they are scheduled to be in the charter school.

Initial Regulatory Flexibility Analysis

The proposed rules prevent small businesses from hiring minors in certain occupations deemed hazardous to the minors’ health, safety, or welfare.

Fiscal Estimate

The proposed rules prevent governmental bodies from hiring minors in certain occupations deemed hazardous to the minors’ health, safety, or welfare but these prohibitions have no fiscal impact.

Submittal of proposed rules to the legislature

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

Chiropractic Examining Board
(CR 03-082)

Chs. Chir 2 to 6, 9 and 10, relating to current practices and to correct oversights and problematic language, related to the board's adoption of Part IV of the national examination in lieu of a state-administered examination to demonstrate clinical competence.

Commerce
(CR 03-075)

Ch. Comm 5, relating to licenses, certifications and registrations.

Psychology Examining Board
(CR 03-079)

Chs. Psy 1 and 5, relating to the definition of prohibited dual relationships, the elaboration of the prohibition on exploitative relationships, the responsibility of license-holders to cooperate with board investigations, a requirement to maintain records, and violations of board orders.

Public Instruction
(CR 03-102)

Ch. PI 5, relating to GED test score standards and state fee charges.

Transportation
(CR 03-123)

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

Rule orders filed with the revisor of statutes bureau

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

Commerce (CR 03-047)

An order affecting ch. Comm 18, relating to elevators, escalators and lift devices.
Effective 4-1-04.

Insurance (CR 03-083)

An order affecting ch. Ins 25, relating to exceptions to the annual notice and limits on disclosure of nonpublic personal financial information.
Effective 4-1-04.

Medical Examining Board (CR 03-023)

An order affecting ch. Med 22, relating to the licensure and regulation of perfusionists.
Effective 4-1-04.

Natural Resources (CR 03-074)

An order affecting ch. NR 5, relating to waiver of the slow-no-wake speed restriction on Elkhorn Lake, Walworth county.
Effective 4-1-04.

Public Instruction (CR 03-103)

An order affecting ch. PI 25, relating to the children at risk program.
Effective 4-1-04.

Regulation and Licensing (CR 02-103)

An order affecting ch. RL 2, relating to extension of disciplinary action time limits.
Effective 4-1-04.

Notice of suspension of an administrative rule

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 28, 2004 and adopted the following motion:

Moved by Senator Leibham and seconded by Representative Grothman that, pursuant to sections 227.19 (4) (d) 1., 3., and 6. and 227.26 (2) (d), Stats., the Joint Committee for the Review of Administrative Rules, suspends portions of ch. Trans 233, relating to division of land abutting a state trunk highway or connecting highway.

Motion Carried: 7 Ayes, 3 Noes

As a result of this action, JCRAR takes no position as to the legality or constitutionality of the remaining language contained in Ch. Trans 233.

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

First Class

U.S. POSTAGE PAID

Madison, Wisconsin

Permit Number 1369

First Class Mail

*Wisconsin
Administrative
Register*

Dated Material. Please Do Not Delay!