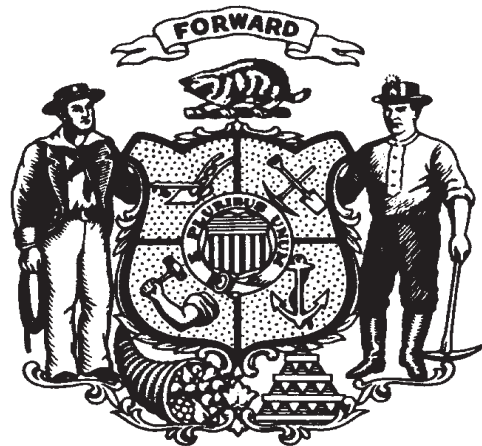


Wisconsin Administrative Register

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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 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
Hearing Date: March 16, 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
Extension Through: March 31, 2004

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 31, 2004

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

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

Finding of emergency

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

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

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

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

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

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

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule

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

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

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

**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

Health and Family Services

Subject

The Department proposes to repeal and recreate ch. HFS 113, rules governing certification of first responders. The objective of the rulemaking is to incorporate and reflect current medical practices in HFS 113, update the rule's training requirements, and better define first responders.

Policy analysis

The existing HFS 113 focuses primarily on first responders' defibrillation skills, training and certification. The Department proposes to update the terms defined in the chapter to better reflect current medical practice and expand first responders' authorized scope of practice. The Department also proposes to update and clarify first responders' training and operational requirements. For example, the Department will propose to alter the curriculum for first responder training to reflect new and advanced skills, including non-visualized advanced airway and epinephrine administration via auto injector for anaphylactic shock. The use of these skills will depend on medical direction to the first responder. In addition, given the proven efficacy of defibrillation, the proposed rules will no longer consider defibrillation to be an optional skill. Finally, the Department intends to reorganize the chapter to be similar to the organization of chapters HFS 110, 111 and 112, other administrative code chapters pertaining to emergency medical services.

Statutory Authority

Sections 146.50 (13) (a) and (b), Stats.

Staff time required

The Department estimates it will take 120 hours of staff time to develop proposed rules. The Department will consult with the state medical director for emergency medical services and with the Policy and Practice Committee of the EMS Advisory Board and others with particular expertise regarding First Responders during the drafting of the rules.

Natural Resources

Subject

The proposed rule concerns the conduct of visitors to Department properties. We are also considering clarification to the section on park trails in s. NR 1.30 and a possible change to s. NR 51.73 to update the current list of designated state trails.

Policy analysis

Camping fees: The Department will be evaluating proposals to institute a fee for camping in areas currently not subject to a charge, minor modifications to the list of Class "A" and "B" campgrounds, and modifications to Class A camping fees based on market conditions. An adjustment of fees to reflect current charges at the two outdoor group campsites with electrical service, and an adjustment to shelter fees are also being considered.

Camping policies: Adjustments to the maximum permitted length of a camping stay, and adjustment to the dates for one

day camping reservations are also being considered. Modifications are also being considered regarding campsite occupancy and transferability of camping permits and reservations. The need for a definition of campsite occupancy is also being evaluated. Limits on the maximum length of a camping stay is also being considered for some campgrounds within the Northern Highland American Legion State Forest.

State park and southern forest policies (other than camping): A permit requirement to operate a dog sled in a state park, recreation or southern forest land is being considered. A clarification of the definition of posted use areas for pets may also be needed. A provision that would restrict down hill skiers and snowboarders to the leased area of Granite Peak at Rib Mountain State Park is also being evaluated.

Trails: A number of changes are also being evaluated regarding trails. Clarification of permitted activities/rules on state Ice Age Trail (IAT) lands, and an acknowledgment that dispersed camping may be permitted on certain IAT lands are being considered as well as a clarification that the trails on IAT lands and the North Country Trail are intended as a footpath. An update to the list of designated state trails in ch. NR 51 and a clarification of s. NR 1.30 (1) (e) to reflect the linear trail program/designation are also being considered. There is also interest in clarifying that vehicles may only be operated on posted roads and trails, that trail fees are applicable year round, modifying the definition of pedestrian to parallel what is in statute, and that hunting is not allowed on state park trails. Having the ability to revoke disabled permits for violating the terms of the permit is also being evaluated.

State natural areas: Provisions which are being considered are a prohibition on air guns on state Natural Areas, a prohibition on flying related activities (such as hang gliding, hot air ballooning, etc.), codifying that berry picking is permitted at Spread Eagle Barrens Natural Area property and codifying the fact that Bass Lake Fen Scientific Natural Area is closed to hunting.

Miscellaneous:

- A restriction on the use of rifles, handguns and shotguns with slugs on one property,
- Language prohibiting a person from knowingly resisting or obstructing a peace officer while the officer is doing any act in an official capacity and with lawful authority,
- Clarification to the definition of posted use areas for the purposes of pets is also being considered.
- Clarifications to the fee areas at Indian Mound Area within the American Legion State Forest
- Reduction in the area in which pets are prohibited within the Pinewoods Group Camp in the northern unit of the Kettle Moraine State Forest.
- Other miscellaneous property management regulations will also be considered including those that are designed to improve the clarity of code language.

Affected and interested parties: The affected and interested parties would be the users of the properties. Many of the proposals are simply clarifications of existing rules. The proposal that likely would generate the greatest level of interest if advanced is the charging of fees for camping in

areas currently not subject to a fee. The fees are being considered to help offset the operational costs of these camping areas. The Department has been encouraged by the hunting and fishing community to seek ways to obtain revenue from other users of Department properties. The fee increases are designed to help accomplish that goal.

Statutory Authority

Sections 23.091, 23.09 (2), 23.28 (3), 27.01 (2) (j), (10) (b) and (f), and 227.11 (2) (a), Stats.

Staff time required

Approximately 120 hours will be needed by the Department.

Natural Resources

Subject

Chapter NR 116, Wisconsin's floodplain management program.

Policy analysis

DNR staff have identified a number of proposed changes to Ch. NR 116 to address implementation of the floodplain management program. These include: providing regional staff with more flexibility to deal with requests for engineering assistance and for reviewing and approving floodplain zoning ordinances; addressing concerns of the Federal Emergency Management Agency that some current code provisions may not meet minimum federal standards; modifying the basement variance standards to comply with a Wisconsin Supreme Court case; clarifying community responsibilities for substantial damage assessments; and providing more specificity on how floodproofing projects can be accomplished.

DNR staff are proposing to hold discussions with private consultants, federal agency staff and regional planning commission staff regarding the review and approval of floodplain engineering models and associated maps. Based on those discussions, the department may convene an advisory group to recommend possible changes to current engineering standards in Ch. NR 116.

Statutory authority

Sections 87.30 and 227.11, Stats.

Staff time required

Approximately 310 hours will be needed by the department.

Federal regulatory analysis

Chapter 44 CFR, subpart 60, contains minimum federal criteria for land management and use in Special Flood Hazard Areas (SFHA). Under this subpart, development, which is defined as any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment, must be permitted and regulated as described therein.

The extent of the federal regulations are based on the type of study and associated maps which have been provided to the community. If the community does not have maps, but has acknowledged the presence of flood-prone areas by submitting an application to join the National Flood Insurance Program (NFIP), the community must at a minimum issue permits for development in flood-prone areas and review all

applications to ensure that development is reasonably safe from flooding by meeting the following standards: 1) ensure that all new construction and substantial improvements shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure; 2) be constructed with flood-resistant materials; 3) be constructed using methods to minimize flood damages; and 4) ensure that all mechanical components and utilities are properly elevated to prevent flood damages.

If a community has identified SFHA's, but no flood elevations are shown, the community must utilize any available study data to determine an approximate flood elevation and ensure that the lowest floor of any proposed structure be placed at or above that elevation. If a mapped flood elevation has been determined, that elevation must be used for all proposed development. If the regulatory floodway is shown on the map, no development can occur in the floodway unless the applicant can demonstrate that the development will cause no increase in the existing flood elevation. In addition to these criteria, the general development standards for unmapped areas would also apply.

In Wisconsin, Chapter NR 116, Wis. Adm. Code, contains the minimum standards for floodplain development. Unlike the federal standards, Wisconsin regulations vary between floodway and floodfringe areas. New development is prohibited in floodway areas because these areas of moving water are extremely hazardous and are not safe for most structural development. There are several exceptions: open-sided structures accessory to open-space uses, water-dependent uses, or historic structures are allowed in limited circumstances.

In floodfringe areas, which are farther from the river channel and are used to store flood waters rather than convey flood waters down stream, new development, additions or modifications to existing development are permitted if the development is elevated on fill one foot above the regional flood elevation (RFE), with the lowest finished floor two feet above RFE. Federal standards only require elevation to the RFE, but Wisconsin and many other states have always had higher standards for a number of reasons: concerns with spring snow melt, ice or debris jams; higher flood elevations due to increased development in the watershed; poor quality mapping with incorrect flood elevations; and to avoid structures being designated nonconforming if flood elevations change and they no longer meet required elevation standards.

Also, Wisconsin requires new floodfringe development to have dryland access to lands outside the Special Flood Hazard Area, in order to assure that emergency service providers can access floodplain structures during flood events.

At this time, the department is not proposing any substantive changes to the development standards in ch. NR 116. The primary issues are providing more flexibility in the departments floodplain technical assistance program, assuring compliance with all federal standards and recent Wisconsin Supreme Court decisions, and ensuring that engineering models and standards are current. As part of the Technical Advisory Committee's charge, standards for accessory structures and floodproofing standards may be reviewed to determine whether any standards should be modified or added to keep current with accepted engineering standards and practices.

Public Instruction

Subject

Section PI 6.03, relating to public librarian certification.

Policy analysis

The department proposes to refine and update the current public librarian certification rules. The current certification rules have been in place for four years. Since that time, a number of issues have arisen and certification would be improved, both administratively and for participants, if the rules were refined and updated.

New policies included in the rule: Temporary certification would be available at the grade II and grade III levels for up to four years to enable public librarian certification applicants to complete the four library courses required for regular certification. Applicants at both of these levels would be required to begin the course sequence with a public library administration or basic library management course and complete it within one year. Applicants would be required to complete at least one other of the four required courses by the end of the third year (overall, applicants would be required to complete an average of one library course per year for four years with a temporary certificate).

Policy alternative to maintain current rules: Temporary certification is currently available at the grade II level for up to three years to enable certification applicants to complete the four library courses required for regular certification. The certification rules for grade II do not specify the course sequence. Temporary certification is currently available at the grade III level for up to one year to enable applicants to complete a basic library management course. Initial regular certification at the grade III level is available for five years to enable applicants to complete three additional library courses.

Statutory authority

Sections 43.07 (1) and 43.09, Stats.

Staff time required

The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process will take up to six months to complete.

Revenue

Subject

Chapter Tax 61, relating to technical improvements in the chapter and to the Retailer Performance Program of the Wisconsin Lottery.

Policy analysis

The objective of this proposed rule is to improve the Retailer Performance Program (the RPP) of the Wisconsin Lottery and to make technical changes to the Wisconsin Lottery's Administrative Rules. The current RPP is functioning efficiently, but the Lottery believes that a better return on investment will be generated by re-focusing the funding consistent with statements made by the Legislative Audit Bureau in Audit Report 02-9, May 2002.

Administratively, it is apparent that, under the current rules, some retailers could receive payment for performance which is not completely consistent with the intent of the program. These proposed changes will address those issues in a manner consistent with current program standards regarding eligibility, qualification and payment, and are expected to improve the overall return on investment.

Existing policies are set forth in the rules. Under this proposed rule, the Retailer Performance Program (RPP) of the Wisconsin Lottery is being updated to significantly reduce the amount of payments made to retailers who do not fully meet expected performance through-out the fiscal year. There are three substantive changes to the RPP. Also under this proposed rule order, there are technical changes which update Lottery operations of retailer contracting, ticket security and product definition.

Regarding the improvements to the RPP, the Winning Ticket payments are being administratively capped to improve expenditure control, and a pari-mutuel payment strategy is being implemented on top prizes to avoid excessive and unreasonably large payments to one retailer, consistent with lottery industry best practices.

Next, a substantial portion of funding authority for Sales Goals payment is being re-aligned from quarterly payments into an annual payment at the end of the fiscal year. This will reduce the number of retailers who receive RPP payments for performance which is inconsistent through-out the year, and will encourage year-long focus on performance goals.

Last, these amendments will shift a portion of the funding into the more extensive use of Short-Term incentives. Various limitations on the short-term incentives will be expanded or lifted, to allow greater flexibility while still satisfying Legislative Audit Bureau guidelines. The Lottery expects an overall improved return on investment of the use of these funds.

In this proposed rule, all three major portions of the Retailer Performance Program will receive some improvement, while the Lottery still maintains the overall cap on general funding authority for RPP as stated in s.565.02 (4) (g).

Consistent with 2003 Wisconsin Act 118, the Lottery has reviewed the intended changes for a cost impact to the private sector. The proposed changes do not generate new or altered compliance expectations, therefore the private sector and specifically Lottery retailers experience no significant added compliance costs. Further, at this time there is no relevant outstanding federal legislation which would require comparative review.

Statutory authority

Sections 227.11 (2) (a), 565.02, 565.02 (4) (g) and 565.10 (14) (b) 3m., Stats.

Staff time required

It is estimated that approximately 120 hours of staff time will be required to complete this proposed rule.

Transportation

Subject

Objective of the rule. This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding 2 highway segments to the network. The actual segments being proposed are:

STH 70 from Spooner to STH 40 at Radisson STH 70 from STH 27 at Ojibwa to STH 13 at Fifield.

Policy analysis

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to make changes to the long truck route network. Chapter Trans 276

is an existing rule set up for long truck routes. The Department has received a request from Wilderness Products & Services, Inc., of Loretta, WI, to add these highway segments.

Statutory authority

Section. 348.07 (4), Stats.

Staff time required

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

Submittal of proposed rules to the legislature

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

**Educational Approval Board
(CR 03–126)**

Relating to the regulation of for-profit postsecondary schools; out-of-state, non-profit colleges and universities; and in-state, non-profit institutions incorporated after 1991.

**Marriage and Family Therapy, Professional Counseling
and Social Work Examining Board
(CR 03–090)**

Relating to the determination of the equivalency of a foreign degree to a degree from an institution accredited in the United States, and to require some candidates to demonstrate English proficiency.

**Public Service Commission
(CR 03–086)**

Relating to rules concerning the time period covered by a strategic energy assessment.

Public notices

Workforce Development

2004 CHILD CARE COPAY SCHEDULE

Child Care Co-Payment Schedule for Licensed and Certified Care																			
Look down the column of the appropriate family size until you find the gross family monthly income level at or just less than the family income. Look to the right to find the appropriate co-payment by family and type of care.																			
	Gross Monthly Family Income									Weekly Licensed Care Co-Pay Amount Children in Subsidized Care:					Weekly Certified Care Co-Pay Amount Children in Subsidized Care:				
	Family Size:																		
	2	3	4	5	6	7	8	9	10 or more	1	2	3	4	5 or more	1	2	3	4	5 or more
70% FPL	\$729	\$914	\$1,100	\$1,285	\$1,471	\$1,656	\$1,842	\$2,027	\$2,213	5	8	13	16	21	2	6	9	11	15
75% FPL	\$781	\$979	\$1,178	\$1,377	\$1,576	\$1,774	\$1,973	\$2,172	\$2,371	5	10	15	19	24	3	7	10	14	16
80% FPL	\$833	\$1,045	\$1,257	\$1,469	\$1,681	\$1,893	\$2,105	\$2,317	\$2,529	7	11	16	22	26	6	8	11	16	18
85% FPL	\$885	\$1,110	\$1,335	\$1,560	\$1,786	\$2,011	\$2,236	\$2,461	\$2,687	10	15	19	24	29	7	10	14	16	20
90% FPL	\$937	\$1,175	\$1,414	\$1,652	\$1,891	\$2,129	\$2,368	\$2,606	\$2,845	11	18	24	30	35	8	13	16	20	25
95% FPL	\$989	\$1,241	\$1,492	\$1,744	\$1,996	\$2,248	\$2,499	\$2,751	\$3,003	15	22	29	35	43	10	16	20	25	30
100% FPL	\$1,041	\$1,306	\$1,571	\$1,836	\$2,101	\$2,366	\$2,631	\$2,896	\$3,161	16	24	31	39	45	11	16	22	27	32
105% FPL	\$1,093	\$1,371	\$1,649	\$1,928	\$2,206	\$2,484	\$2,762	\$3,041	\$3,319	19	26	34	41	48	14	18	24	28	34
110% FPL	\$1,145	\$1,436	\$1,728	\$2,019	\$2,311	\$2,602	\$2,894	\$3,185	\$3,477	22	30	35	43	50	15	20	25	30	35
115% FPL	\$1,197	\$1,502	\$1,806	\$2,111	\$2,416	\$2,721	\$3,025	\$3,330	\$3,635	24	31	39	46	52	17	22	27	32	38
120% FPL	\$1,249	\$1,567	\$1,885	\$2,203	\$2,521	\$2,839	\$3,157	\$3,475	\$3,793	26	34	41	48	56	18	24	28	34	39
125% FPL	\$1,301	\$1,632	\$1,964	\$2,295	\$2,626	\$2,957	\$3,289	\$3,620	\$3,951	30	35	43	50	57	21	25	30	35	40
130% FPL	\$1,353	\$1,698	\$2,042	\$2,387	\$2,731	\$3,076	\$3,420	\$3,765	\$4,109	31	40	48	57	65	22	27	34	39	46
135% FPL	\$1,405	\$1,763	\$2,121	\$2,478	\$2,836	\$3,194	\$3,552	\$3,909	\$4,267	34	43	52	63	72	24	30	37	43	50
140% FPL	\$1,457	\$1,828	\$2,199	\$2,570	\$2,941	\$3,312	\$3,683	\$4,054	\$4,425	35	45	56	65	75	25	32	39	45	52
145% FPL	\$1,509	\$1,893	\$2,278	\$2,662	\$3,046	\$3,430	\$3,815	\$4,199	\$4,583	39	48	57	67	77	27	34	40	48	53
150% FPL	\$1,561	\$1,959	\$2,356	\$2,754	\$3,151	\$3,549	\$3,946	\$4,344	\$4,741	41	50	60	69	80	28	35	42	49	56
155% FPL	\$1,613	\$2,024	\$2,435	\$2,846	\$3,256	\$3,667	\$4,078	\$4,489	\$4,899	43	52	62	71	82	30	38	43	50	57
160% FPL	\$1,665	\$2,089	\$2,513	\$2,937	\$3,361	\$3,785	\$4,209	\$4,633	\$5,057	46	56	65	75	84	32	39	46	53	59
165% FPL	\$1,717	\$2,155	\$2,592	\$3,029	\$3,466	\$3,904	\$4,341	\$4,778	\$5,215	47	57	67	76	86	33	40	48	54	60
170% FPL	\$1,769	\$2,220	\$2,670	\$3,121	\$3,571	\$4,022	\$4,472	\$4,923	\$5,373	48	60	70	80	89	34	42	49	56	61
175% FPL	\$1,821	\$2,285	\$2,749	\$3,213	\$3,676	\$4,140	\$4,604	\$5,068	\$5,531	49	62	72	82	91	34	43	50	57	63
180% FPL	\$1,874	\$2,351	\$2,828	\$3,305	\$3,782	\$4,259	\$4,736	\$5,213	\$5,690	51	64	75	85	93	35	45	53	59	66
185% FPL	\$1,926	\$2,416	\$2,906	\$3,396	\$3,887	\$4,377	\$4,867	\$5,357	\$5,848	52	66	76	86	96	36	48	53	60	67
-----185% of the Federal Poverty Level-----																			
190% FPL	\$1,978	\$2,481	\$2,985	\$3,488	\$3,992	\$4,495	\$4,999	\$5,502	\$6,006	53	67	80	88	97	39	49	56	62	70
195% FPL	\$2,030	\$2,546	\$3,063	\$3,580	\$4,097	\$4,613	\$5,130	\$5,647	\$6,164	56	69	82	91	101	39	50	57	64	71
200% FPL	\$2,082	\$2,612	\$3,142	\$3,672	\$4,202	\$4,732	\$5,262	\$5,792	\$6,322	57	70	84	93	103	40	52	59	66	71
<<<-----+200% of the Federal Poverty Level----->>>																			

Note: The copayment rate for teen parents who are not Learnfare participants is minimum copay and is found by selecting the lowest income line (70%) FPL and then finding the copayment listed, under either licensed care or certified care, for the appropriate number of children. Parents who have left a W-2 employment position for unsubsidized work also qualify for the minimum copay for one month. Families with children who are authorized for 20 hours or less are subject to one half of their share of the family copay listed above for those children. No copay is required for parents who participate in Learnfare or Food Stamp Employment and Training. Foster parents do not have a copayment responsibility for the foster children in their care. Kinship care relatives caring for a child under court order do not have a copayment responsibility. Kinship care relatives caring for a child without a court order pay the minimum copay, unless they are receiving a child care subsidy for another child who is subject to a copayment greater than the minimum copay.

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