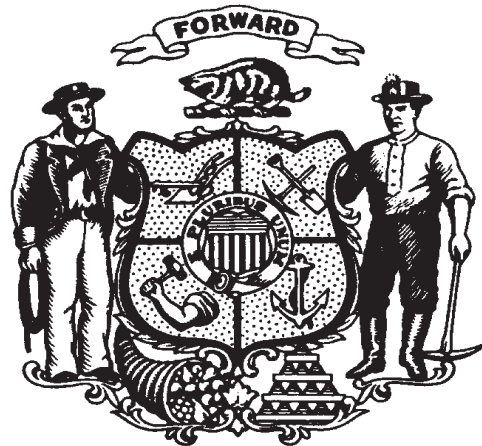


# Wisconsin Administrative Register

No. 610



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## Emergency rules now in effect

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

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

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

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

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

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

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### Administration

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

#### Exemption from Finding of Emergency

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

#### Plain language analysis

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

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

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

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

**Publication Date: July 1, 2006**

**Effective Date: July 1, 2006**

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

**Hearing Date: August 11, 2006**

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

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

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

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

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

**Publication Date: July 12, 2006**

**Effective Date: July 12, 2006**

**Expiration Date: December 9, 2006**

**Hearing Date: August 15, 2006**

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

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

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

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

**Publication Date:** October 9, 2006  
**Effective Date:** October 9, 2006  
**Expiration Date:** March 7, 2007  
**Hearing Date:** November 13, 2006  
 [See Notice this Register]

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## Commerce

### (Financial Resources for Businesses and Communities, Chs. Comm 105 to 131)

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

#### Exemption from Finding of Emergency

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

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

**Publication Date:** June 30, 2006  
**Effective Date:** July 1, 2006  
**Expiration Date:** November 28, 2006  
**Hearing Date:** July 25, 2006

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## Corrections

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

#### Finding of Emergency

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

The purpose of the emergency rule is to establish an annual sex offender registration fee to partially offset the costs of monitoring persons who are on probation, parole, or extended supervision. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of fees while permanent rules are being developed.

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

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## Elections Board (2)

1. Rules adopted creating **s. EIBd 1.395**, relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee and relating to the use of those converted funds whose contribution to the federal committee would not have been in compliance with Wisconsin law if the contribution had been made directly to a state campaign committee.

#### Finding of Emergency

The Elections Board finds that an emergency exists in the recent change in federal law that permits the transfer of the funds in a federal candidate campaign committee’s account to the candidate’s state campaign committee account and finds that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

Since the Bi–Partisan Campaign Reform Act of 2002 (BICRA), transfers of funds from a federal campaign committee to a state campaign committee had not been authorized under federal law. In November, 2004, Congress amended the Federal Election Campaign Act, (H.R. 4818, s. 532 (3) and 532 (4), to permit the transfer of a federal candidate’s campaign committee’s funds to the candidate’s state campaign committee, if state law permitted, and subject to the state law’s requirements and restrictions.

Because of Congress’ action in November, 2004, money which had not been available to a state committee under



BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, s. EIBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

**Publication Date:** February 3, 2005  
**Effective Date:** February 3, 2005\*/\*\*  
**Expiration Date:** December 3, 2006  
**Hearing Date:** May 18, 2005

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

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

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

#### Finding of Emergency

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

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

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

that assurance before election day, by the promulgation of this emergency rule, is found to be in the public interest.

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

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### Emergency Management

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

#### Finding of Emergency

The Wisconsin Division of Emergency Management finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting an emergency is as follows:

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

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

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

**Publication Date:** June 8, 2006  
**Effective Date:** June 8, 2006  
**Expiration Date:** November 5, 2006  
**Hearing Date:** August 14, 15, 16 & 17, 2006

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### Financial Institutions – Banking

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

#### Finding of Emergency

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

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

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

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

### Finding of Emergency

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

The facts constituting the emergency are as follows:

In Wisconsin there are approximately 430 ambulance service providers. Approximately 80% are volunteer (not for profit) or owned by private for profit entities. The remaining 20% are government owned. A total of 129 ambulance service providers and 2,812 licensed individuals in 48 counties currently provide emergency medical services at the EMT–basic–IV (74) or EMT–provisional intermediate (55) level to approximately 2.65 million Wisconsin residents. The provider industry estimates that these ambulance service providers are losing approximately \$1.5 million dollars in reimbursement revenues annually due to the codification of the EMT–basic IV services in ch. HFS 110 as basic life support. The loss is likely to increase when the provisional EMT–intermediate is renamed EMT–basic IV effective July 1, 2006, and an estimated 95% of the individuals who are currently licensed and titled as provisional EMT–intermediate will be renamed EMT–basic IV. Ambulance service providers report that they cannot continue to cover the costs of training and operating at the advanced life support level of care while being reimbursed at the basic life support level of care. Consequently, the level of emergency medical services provided in over half of the state's 72 counties may be reduced or become non–existent unless changes are implemented.

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

**Publication Date:** July 1, 2006  
**Effective Date:** July 1, 2006  
**Expiration Date:** November 28, 2006  
**Hearing Dates:** July 25, 26 and 27, 2006

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

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

### Exemption from Finding of Emergency

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

Plain language analysis:

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

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

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

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

## Insurance (2)

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

### Finding of Emergency

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

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

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

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

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

#### **Finding of Emergency**

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

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

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

**Publication Date:** September 22, 2006  
**Effective Date:** September 22, 2006  
**Expiration Date:** February 19, 2007

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

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

#### **Finding of Emergency**

It is important to have restrictions on out-of-state firewood entering department lands in place this camping season due to recent developments in efforts to eradicate and quarantine emerald ash borer in the areas where it is currently established. In Michigan, Ohio, Indiana and Ontario, eradication programs are being dramatically scaled back or abandoned entirely for this summer. A recent audit of quarantine efforts in Michigan where emerald ash borer is most abundant and widespread is critical and faults their program for lax enforcement and poor education of the public to the dangers of moving firewood. Given this situation, a need for an external quarantine to protect Wisconsin forest resources, industry, and community trees becomes obvious. The Wisconsin Department of Agriculture, Trade and Consumer Protection has proposed an external quarantine on

host material of emerald ash borer and three other invasive pests and diseases and our firewood regulation would help support this effort, provide an opportunity for education of the public and reduce one of the reasons people move firewood: for use while camping.

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

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

#### **Finding of Emergency**

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

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

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

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

#### **Finding of Emergency**

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

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

for the 2006 construction season, with specific standards for shore erosion control structures on rivers and streams.

**Publication Date:** May 5, 2006  
**Effective Date:** May 8, 2006  
**Expiration Date:** October 4, 2006  
**Hearing Date:** June 13, 2006  
**Extension Through:** December 2, 2006

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

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

#### Finding of emergency

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

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

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

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

### Regulation and Licensing

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

#### Plain language analysis

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

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

#### Exemption from finding of emergency

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

**Publication Date:** April 15, 2006  
**Effective Date:** April 15, 2006  
**Expiration Date:** September 12, 2006  
**Hearing Date:** June 27, 2006  
**Extension Through:** November 10, 2006

### Transportation (2)

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

#### Exemption from finding of emergency

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

#### Analysis Prepared by the Department of Transportation

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

**Publication Date:** July 1, 2006  
**Effective Date:** July 1, 2006  
**Expiration Date:** See section 8 (2) of 2005 Wis. Act 89  
**Hearing Date:** August 8, 2006

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

#### **Exemption from finding of emergency**

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

#### **Plain language analysis**

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

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

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

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

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

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

The second consequence of Act 363 the Department has discovered in drafting this emergency rule is that one statute that formerly restricted double-bottom tractor-trailer combinations to the state's long-truck network was repealed by the deletion of the reference to s. 348.07 (2) (gm), Stats.,

by the Act's amendment of s. 348.07 (4), Stats. Under the amended statute, as revised by Act 363, it might appear to a reader that double bottom trucks of unlimited length may operate upon any highway in the state, including local roads and streets, without permits. Section 348.08 (1) (e), Stats., however, continues to provide that double-bottom trucks be restricted to highways designated by the department under s. 348.07 (4). WisDOT believes this provision continues to limit double-bottom operation to long truck routes designated by the Department under s. 348.07 (4), Stats. WisDOT would suggest the deleted reference to (2) (gm) in 348.07 (4), Stats., be re-inserted into the statute to avoid confusion.

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

<b>Publication Date:</b>	<b>September 15, 2006</b>
<b>Effective Date:</b>	<b>September 15, 2006</b>
<b>Expiration Date:</b>	<b>See section 7 (2) of 2005 Wis. Act 363</b>
<b>Hearing Date:</b>	<b>October 4, 2006</b>

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### **Workforce Development**

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

#### **Finding of emergency**

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

Under the Grants Supporting Community Child Care Initiatives program, the Department distributes federal Child Care Development Funds to local governments and tribes. The funding period for the grants is the federal fiscal year of October 1 to September 30. The Department cannot release the 2006-2007 grants scheduled to begin October 1 until the change in this emergency rule is effective. These grants will provide \$2.5 million of federal funds to support activities such as accommodation of children with disabilities, education of providers, and staff retention strategies.

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

<b>Publication Date:</b>	<b>October 2, 2006</b>
<b>Effective Date:</b>	<b>October 2, 2006</b>
<b>Expiration Date:</b>	<b>March 1, 2007</b>
<b>Hearing Date:</b>	<b>October 26, 2006</b>

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## Scope statements

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### Administration

#### Subject

Non-municipal electric utility low-income assistance fee, affecting ch. Adm 43.

#### Policy Analysis

*Objective of the rule.* To remove references to “Public Benefits” programs pursuant to 2005 Wisconsin Act 141. The changes will also revise and simplify the manner in which the Low-Income Assistance Fee is collected.

*Existing policy.* 1999 Wisconsin Act 9 included major provisions relating to aspects of electric utility regulation, commonly referred to as “Reliability 2000.” That legislation created a new statutory framework within which “Public Benefit” programs relating to low-income energy assistance and energy conservation and renewable energy were continued and expanded.

Under ss. 16.957 (2) (c) and (4) (b), Stats., the Department of Administration promulgated rules setting fees to be collected by utilities from their customers, and establishing requirements and procedures related to those low-income and energy conservation programs. This rule provides mechanisms for setting, collecting, and reporting the fees, and related matters.

*New policy.* 2005 Wisconsin Act 141 reversed major portions of the earlier 1999 Wisconsin Act 9. That Act transferred responsibility for energy conservation and renewable energy to the Public Service Commission while leaving responsibility for low-income energy assistance at the Department of Administration.

The amendments to this rule remove references to energy conservation and renewable energy programs and associated fees, while leaving them intact for low-income assistance programs. The amended rule will simplify the collection of fees by the Department for the conduct of the low-income assistance program, which will henceforth be referred to as the “Low-Income Assistance Program.”

*Policy alternative.* Do not change the program name in the existing rules. The program could continue to operate under existing statutory authority even if the nomenclature was inaccurate. The existing collection process has proven to be workable but very cumbersome to all parties. It could continue to operate as is.

#### Statutory authority

This chapter is promulgated under authority of ss. 16.004 (1), 16.957 (2) (c) 5., 16.957 (4) (b), and 227.11, Stats. Sections 16.957 (2) (c) 1. and 2., Stats., as amended by 2005 Act 141 remain in effect.

#### Staff time required

Staff and management of the Division of Energy are expected to spend approximately 40 hours over the course of the drafting and approval process. Department of Administration legal staff is expected to spend approximately 12 hours.

#### Entities affected by the rule

The change in the name will merely reflect the revised program which contractors will deal with as a result of 2005 Wisconsin Act 141. Non-municipal electric utilities in Wisconsin will be able to deal with the collection of the Low-Income Assistance Fee with less difficulty. Electric rate payers will notice no changes as a result of this rule, nor will existing low-income delivery agents who currently deliver the Low-Income Assistance program under contract with DOA.

#### Comparison with federal regulations

The Low-Income Assistance program receives substantial federal funding. The rules associated with that funding will have no impact on the activities in this rule, nor will the rule changes impact the federal program.

### Administration

#### Subject

Energy conservation and efficiency and renewable resource programs, affecting ch. Adm 44.

#### Policy Analysis

*Objective of the rule.* This rule is being repealed in its entirety because 2005 Wisconsin Act 141 transferred all of the responsibilities governed by the rule to the Public Service Commission.

*Existing policy.* The rule established requirements, procedures and criteria to be followed by program administrators in soliciting and selecting applications for grant funding to be awarded by the Department for energy efficiency and renewable energy programs established under s. 16.957 (2) (b), Stats.

*New policy.* Responsibility for those programs will be transferred to the Public Service Commission effective July 1, 2007.

*Policy alternative.* 2005 Wisconsin Act 141 leaves the Department with no option but to repeal this rule.

#### Statutory authority

The original rule was promulgated under statutory authority: ss. 16.004 (1), 16.957 (2) (c) and 227.11, Stats. 2005 Wisconsin Act 141 amended s. 16.957 (2) (c) 2., Stats., to exclude energy conservation and efficiency and renewable resource programs from department duties and repealed s. 16.957 (2) (c) 2m. and 2n., Stats.

#### Staff time required

It is anticipated that less than 8 hours of staff time will be devoted to overseeing the process of repealing this rule. Department legal staff is expected to spend 2 hours.

#### Entities affected by the rule

The entities affected will be those involved with the energy efficiency and renewable energy programs to be transferred. This includes contractors, primarily the Wisconsin Energy Conservation Corporation and the Energy Center of Wisconsin. They will be subject to oversight by the Public Service Agency upon the effective date of the transfer.

### Comparison with federal regulations

There is no federal regulation that affects the activities in this rule, whether they are conducted by the Department or the Public Service Commission.

## Administration

### Subject

Low-income assistance, affecting ch. Adm 45.

### Policy Analysis

*Objective of the rule.* To change the name of the “Low-Income Public Benefits” program to “Low-Income Assistance” program in conformity with changes made by 2005 Wisconsin Act 141 which transferred the energy efficiency and renewable energy component of the “Public Benefits” program to the Public Service Commission. Only low-income assistance programs remain at the Department. The rule is also amended to conform a definition to a change made by 2005 Wisconsin Act 344.

*Existing policy.* Prior to 2005 Wisconsin Act 141, the low-income assistance programs were operated in tandem with energy efficiency and renewable energy programs as the “Wisconsin Public Benefits” program.

Under s. 16.957 (2) (c), Stats., the Department of Administration is required to promulgate rules for low-income assistance programs. The original rule established eligibility and application requirements and procedures for low-income assistance under the “Public Benefits” program, which included energy conservation and renewable energy responsibilities and was established under s. 16.957 (2) (a), Stats.

*New policy.* 2005 Wisconsin Act 141 transferred the energy efficiency and renewable energy responsibilities to the Public Service Commission, leaving the Department responsible for only the low-income assistance programs. This amendment substitutes the term “low-income assistance” for “public benefits” programs. No changes in the policies under which the low-income assistance programs operate are made by the amendment.

The amendment also changes a reference to “secured correctional facility” to “juvenile correction facility” to conform to a change contained in 2005 Wisconsin Act 344 at s. 938.02 (10p), Stats. This Act related to: reorganizing, making nonsubstantive editorial changes to, revising and creating titles in, clarifying ambiguous language in, and making minor substantive changes to the Juvenile Justice Code.

*Policy alternative.* Do not change the program name in the existing rules. The program could continue to operate under existing statutory authority even if the nomenclature was inaccurate.

### Statutory authority

This chapter is promulgated under authority of ss. 16.004 (1), 16.957 (2) (c) 2., and 227.11, Stats., to implement s. 16.957 (2) (a), Stats.

### Staff time required

Staff and management of the Division of Energy are expected to spend approximately 20 hours over the course of the drafting, promulgation and review process. Department of Administration legal staff is expected to spend approximately 4 hours.

### Entities affected by the rule

No substantive change is made by this amendment and no entity will be affected by this amendment; it merely changes the name of the program and conforms a definition to new law.

### Comparison with federal regulations

The Low-Income Assistance program receives substantial federal funding. The name change and the definition modification are immaterial to the federal regulations covering the program.

## Commerce

### Subject

*Objective of the rule.* The purpose of chapter Comm 5 – Licenses, Certifications and Registrations, is to establish minimum standards for the qualifications and responsibilities of persons or businesses that are required or allowed to obtain credentials under chapters 101, 145, and 167 of the Wisconsin Statutes.

The purpose of the rule revision is to update the certification categories related to storage of flammable, combustible and hazardous liquids – and to update the requirements corresponding to those categories.

### Policy Analysis

The Department currently has credential requirements in chapter Comm 5 for tank system inspectors, tank specialty firms, site assessors, aboveground tank system installers, underground tank system installers, tank system liners, tank system removers and cleaners, and tank system tightness testers.

The proposed rules are expected to (1) modify several credential responsibilities by deleting outdated activities, and adding activities that have proven to better reflect the nature of the work; (2) remove references to past dates that have no relationship to current-day credential qualifications or administration; (3) eliminate continuing-education requirements from specialties where the corresponding technical aspects do not change appreciably, and continuing-education opportunities within the industry are limited; (4) shorten the approval duration for continuing-education courses, from five years to three, unless otherwise specified in an approval letter; (5) require departmental notification if an approved, continuing education course is discontinued or modified; (6) no longer allow renewal of credentials after they expire, except by complying with all of the requirements for new applicants; (7) expand the reasons for denial, suspension or revocation of a credential to include failure to maintain or submit accurate, required records in a timely manner; (8) directly link all credentials for storage of flammable, combustible, and hazardous liquids to the corresponding requirements in chapter Comm 10; (9) modify the site assessor specialty credential terminology to better reflect the scope of the credential; (10) require contractor liability insurance coverage for firms that install, remove, test, line, clean, or perform closure assessment, for tank systems; (11) require certification for individuals who design, install, or test cathodic protection systems for tank systems regulated by Comm 10; and (12) implement related improvements to the corresponding administrative and regulatory processes.

The only feasible alternatives to this rule development at this time would be to leave the code as it is or delay updating the rules. These alternatives would result in the Department continuing to exercise no direct oversight over an essential

element of groundwater protection, and would reduce the other public benefits that will be achieved through the rule revision.

#### **Statutory authority**

Sections 101.02 (1) and (15), 101.09 (3), 101.19 (1), and 227.11 (2) of the Statutes.

#### **Staff time required**

The staff time needed to develop the rules is expected to range from 100 to 300 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

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

The proposed rules may affect (1) individuals who design, install, or test cathodic protection systems for tank systems that will hold flammable, combustible, or hazardous liquids which are regulated by chapter Comm 10; and (2) any firms which currently do not have contractor liability insurance coverage and which install, remove, test, line, clean, or perform closure assessment, for tank systems regulated by chapter Comm 10. The proposed rules may also affect some individuals and firms during renewal of credentials related to storage of flammable, combustible and hazardous liquids; and may affect some providers of the continuing education courses that are utilized in conjunction with those renewals.

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

In Title 40 of the Code of Federal Regulations, under Section 20 of Part 280, a corrosion expert must design and oversee installation of field-installed cathodic protection systems for underground steel storage tanks and piping for flammable, combustible, and federally regulated hazardous liquids. Section 31 of 40CFR280 requires that a qualified cathodic protection tester periodically inspect all cathodic protection systems for these tanks and piping. Section 12 of 40CFR280 establishes definitions for corrosion expert and cathodic protection tester. Those definitions require corrosion experts to be accredited professionals, and require cathodic protection testers to meet specified criteria for education and experience. The proposed rules are expected to incorporate these requirements and definitions into chapter Comm 5.

### **Funeral Directors Examining Board**

#### **Subject**

Creation of rules to make changes relating to continuing education requirements for Funeral Director licensees. Current rules are reflected in ch. FD 4.

#### **Policy Analysis**

*Objective of the rule.* To make changes relating to the continuing education requirements for Funeral Director licensees.

#### **Existing Policies Relevant to the Rules, New Policies Proposed and Analysis of Policy Alternatives.**

The continuing education requirements for Funeral Director licensees can be found in Chapter FD 4. Current rules define requirements for licensees, the requirements for providers to obtain approval of continuing education programs, and qualifications for continuing education instructors.

#### **Statutory authority**

Wis. Stat. § 227.11 (2), Chapter 445, 15.08 (5) (b), 15.08 (6).

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

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

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

Funeral Director licensees, continuing education providers, and continuing education instructors.

#### **Staff time required**

60 hours.

### **Insurance**

#### **Subject**

Ch. Ins 17, relating to peer review surcharge rates for the Injured Patients and Families Compensation Fund and the Wisconsin Health Care Liability Insurance Plan.

#### **Policy Analysis**

The peer review surcharge rates are established in relation to the number of and dollar amount of claims paid on behalf of a health care provider. Pursuant to s. 655.27 (3) (a) 2m., Stats., health care providers with claim payment experience that exceeds the limits established by rule are subject to a surcharge which may result in an increase in the amount of assessment they pay to the the Injured Patients and Families Compensation Fund and the Wisconsin Health Care Liability Insurance Plan. The current surcharge rates were established in 1987 based upon paid claims data at that time. New rates have been actuarially developed based upon more recent claim payment data.

#### **Statutory authority**

Sections 601.41 (3), 619.04 (5m) (a), and 655.27 (3) (bg), Wis. Stats.

#### **Staff time required**

80 hours estimated state employee time to promulgate this rule.

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

Pursuant to Ins 17.285 (2) (d), Wis. Adm. Code, this rule will affect all physicians and certified registered nurse anesthetists subject to Ch. 655, Stats. that have paid claims experience that exceeds the thresholds established by this rule.

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

There is no existing or proposed federal regulation addressing any medical malpractice fund like the Wisconsin Injured Patients and Families Compensation Fund.

### **Insurance**

#### **Subject**

Ch. Ins 17, relating to fund fees and mediation panel fees for fiscal year 2008, and affecting small business.

#### **Policy Analysis**

The proposed rule will establish the annual fees which participating health care providers must pay to the Injured Patients and Families Compensation Fund as required by s. 655.27 (3), Stats., for the fiscal year beginning, July 1, 2007. The proposed rule will also establish the mediation panel fees for fiscal year 2008 commencing July 1, 2007.



Existing policies are set forth in the statutes cited below and in the rules themselves.

#### **Statutory authority**

Sections 601.41 (3), 655.27 (3) (bg) and 655.61, Wis. Stats.

#### **Staff time required**

100 hours estimated state employee time to promulgate this rule; other resources will include the review and recommendation of the board's actuarial committee based on the analysis and recommendations of the fund's actuaries and the director of state courts.

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

All health care provider participants in the fund as set forth in s. 655.002 (1), Stats.

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

There is no existing or proposed federal regulation addressing any medical malpractice fund like the Wisconsin Injured Patients and Families Compensation Fund.

## **Transportation**

### **Subject**

*Objective of the rule.* This rule making will amend s. Trans 102.14 (3) to clarify that a person whose legal presence in the country ends not more than 6 months after he or she applies for an identification card or 12 months after he or she applies for an operator's license is not a resident of this state and so is not eligible for those products. This information will be part of a rule effort initiated by a scope statement published on 9-1-06.

### **Policy Analysis**

2005 Wisconsin Act 126 requires the expiration date of an applicant's driver's license or identification card match the expiration date of the person's legal presence for persons who are not U.S. citizens. Under this new law, which takes effect April 1, 2007, the Department may be issuing driver's licenses or identification cards that are valid for only a few months. The Department proposes to require a minimum authorized stay for at least six months for an identification card or twelve months for an operator's license for persons who are not U.S. citizens to comply with the definition of resident under s. 343.01 (2) (g), Stats. It also should be noted that any nonresident of the United States who holds an international driving permit is allowed to operate for up to one year in Wisconsin, under s. 343.14 (4), Stats.

### **Comparison with federal regulations**

The proposed changes will move Wisconsin towards compliance with the federal REAL ID Act, which takes effect May 11, 2008.

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

Persons who are not U.S. citizens applying for a driver's license or identification card.

### **Statutory authority**

Section 343.06 (1) (k), Stats., prohibits the Department from issuing a license to any person who is not a resident. Section 343.50 (2) prohibits the Department from issuing an identification card to any person who is not a resident.

Section 343.01 (2) (g), Stats., defines a resident as "an adult whose one home and customary and principle residence, to

which the person has the intention to returning whenever he or she is absent, is in this state."

Section 343.05 (4) (b) 2, Stats., exempts nonresidents of the United States from the licensing requirements of 343.05 if they hold an international driving permit. Section 343.05 (4) (c), Stats., specifies that the international driving permit may be used for a period of up to one year after a person's arrival.

### **Staff time required**

Two weeks.

## **Transportation**

### **Subject**

Objective of the rule. 2005 Wis. Act 363 requires WisDOT to adopt a rule to define which state highways should be subject to a 65-foot length limit. This rule making will amend ch. Trans 276 to provide a list of highways upon which trucks longer than 65 feet in length cannot operate without a permit. The rule making also will establish a means for trucks 75 feet long to travel on local roads where state law generally limits overall length to 65 feet so that the 75-foot long trucks may access food, fuel and make pickups and deliveries on these highways without a permit.

### **Policy Analysis**

Section 348.07 (1), Stats., historically has limited the maximum overall length of truck combinations on Wisconsin highways to 65 feet. Section 348.07 (2), Stats., allowed vehicles meeting the specifications of that subsection to operate without permits despite exceeding the 65-foot limit of subsection (1).

2005 Wis. Act 363 amended s. 348.07, Stats., increasing the default overall length limitation to 75 feet on the state trunk highway system. The Act retains the 65-foot overall length limit on all local roads and retains the provision for identifying long truck routes, where no overall length limitation applies. Further, the Act requires the Department to identify any state trunk highways that are restricted to a maximum overall length limit of 65 feet. The rule will establish those highway segments that will be "65-foot restricted routes."

The result of this rule making will be to categorize all state trunk highways into one of three length categories: standard 75-foot routes; restricted 65-foot routes; or, long truck routes with no overall length limit.

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

In drafting this rule the Department intends to propose one apparent oversight in 2005 Wis. Act 363 that was also addressed in the emergency rule that the Department promulgated in response to the Act. Act 363 did not grant any authority for 75-foot vehicles using the new 75-foot routes to leave those routes to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly facilities or points of loading or unloading. The Department does not believe this oversight was intentional and intends to propose a provision similar to that in the current emergency rule that designates the intersection of each 75-foot route and any other highway as a long truck route under s. 348.07(4), Stats. This would permit trucks to exceed the 65-foot default length limit on local roads to access such facilities and make deliveries. The Department believes granting such access privileges would be better accomplished by statutory change and encourages

the legislature to consider statutorily establishing access rights for vehicles using 75-foot restricted routes.

### **Comparison with federal regulations**

In the Surface Transportation Assistance Act of 1982 (STAA), the federal government acted under the Commerce clause of the United States Constitution to provide uniform standards on vehicle length applicable in all states. The length provisions of STAA apply to truck tractor–semitrailer combinations and to truck tractor–semitrailer–trailer combinations operating on the national network. (See Jan. 6, 1983, Public Law 97–424, § 411) The uniform standards provide that:

- No state shall impose a limit of less than 48 feet on a semitrailer operating in a truck tractor–semitrailer combination.
- No state shall impose a length limit of less than 28 feet on any semitrailer or trailer operating in a truck tractor–semitrailer–trailer combination.
- No state may limit the length of truck tractors.
- No state shall impose an overall length limitation on commercial vehicles operating in truck tractor–semitrailer or truck tractor–semitrailer–trailer combinations.
- No state shall prohibit operation of truck tractor–semitrailer–trailer combinations.

The State of Wisconsin complied with the federal requirements outlined above by enacting 1983 Wisconsin Act 78 which amended § 348.07 (2), Stats., and § 348.08 (1), Stats. This act created §§ 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created § 348.07 (2) (gr), Stats., to add 53 foot semitrailers as part of a two vehicle combination to the types of vehicles that may operate along with STAA authorized vehicles. (See 1985 Wisconsin Act 165)

The vehicles authorized by the STAA may operate on the national system of interstate and defense highways and on those federal aid primary highways designated by regulation

of the secretary of the United States Department of Transportation. In 1984 the USDOT adopted 23 CFR Part 658 which in Appendix A lists the highways in each state upon which STAA authorized vehicles may operate. Collectively these highways are known as the National Network. In 1983 Wisconsin Act 78, the legislature enacted § 348.07 (4), Stats., which directs the Wisconsin Department of Transportation to adopt a rule designating the highways in Wisconsin on which STAA authorized vehicles may be operated consistent with federal regulations.

The Department of Transportation first adopted ch. Trans 276 of the Wisconsin Administrative Code in December of 1984. The rule is consistent with 23 CFR Part 658 in that the Wisconsin rule designates all of the highways in Wisconsin that are listed in 23 CFR Part 658 as part of the National Network for STAA authorized vehicles. The federal regulation does not prohibit states from allowing operation of STAA authorized vehicles on additional state highways. Thus, 2005 Wis. Act 363 and this rule making are not inconsistent with that federal law in that none of the roads designated as 65-foot or 75-foot routes in this proposed rule making are on the national network.

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

The rule will affect the trucking industry, including those owning or operating trucks, truck suppliers, those relying on the trucking industry for effective and efficient freight transport, and local governments, including counties, and the Department of Transportation, as the maintaining authority of the State Trunk Highway System. Other entities that may be affected include those that transport freight through other modes (air, rails, water).

### **Statutory authority**

s. 348.07, Stats., as amended by 2005 Wis. Act 363.

### **Staff time required**

It is estimated that state employees will spend 160 hours on the rule-making process, including research, drafting and conducting a public hearing.

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## Submittal of rules to legislative council clearinghouse

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

### Medical Examining Board

On October 16, 2006, the Medical Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule-making order relates to the requirements for completion of the 3-step sequence of the United States Medical Licensing Examination (USMLE).

#### Agency Procedure for Promulgation

A public hearing is required and will be held on November 15, 2006 at 9:00 a.m. in Room 121A at 1400 East Washington Avenue, Madison, Wisconsin.

#### Contact Person

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

Pamela.haack@drl.state.wi.us

### Natural Resources

On October 13, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: s. NR 25.05 (1) (d), Stats.

The proposed rule-making order relates to commercial fishing open seasons in Lake Michigan for chubs.

#### Agency Procedure for Promulgation

A public hearing is scheduled for November 13, 2006.

The Bureau of Fisheries Management and Habitat Protection is primarily responsible for the promulgation of the rule.

#### Contact Person

Bill Horns  
(608) 266-8783

### Natural Resources

On October 13, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule-making order relates to incorporation of revisions and additions to the federal New Source Performance Standards (NSPS).

#### Agency Procedure for Promulgation

A public hearing is scheduled for November 21, 2006.

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

#### Contact Person

Robert Eckdale  
(608) 266-2856

### Natural Resources

On October 13, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule-making order relates to National Emission Standards for Hazardous Air Pollutants (NESHAP) for iron and steel foundries.

#### Agency Procedure for Promulgation

A public hearing is scheduled for November 16, 2006.

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

#### Contact Person

Eric Mosher  
(608) 266-3010

### Occupational Therapists Affiliated Credentialing Board

On October 16, 2006, the Occupational Therapists Affiliated Credentialing Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: ss. 15.085 (5) (b), 227.11 (2) and 448.965, Stats.

The proposed rule-making order relates to continuing education waivers.

#### Agency Procedure for Promulgation

A public hearing is required and will be held on November 14, 2006 at 9:30 a.m. in Room 121A at 1400 East Washington Avenue, Madison, Wisconsin.

#### Contact Person

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

Pamela.haack@drl.state.wi.us

### Public Service Commission

NOTICE IS GIVEN, pursuant to s. 227.14 (4m), Stats., that on October 12, 2006, the Public Service Commission of Wisconsin submitted a proposed rule to the Joint Legislative Council Staff (Rules Clearinghouse) for review.

#### Analysis

The proposed rule, Commission docket 1-AC-221, is a revision of ch. PSC 118, which establishes requirements

for the creation and use of renewable resource credits created after December 31, 2003, and identifies the responsibilities of a program administrator for the renewable resource credits tracking system pursuant to 2005 Wis. Act 141.

**Agency Procedure for Promulgation**

A public hearing will be held on December 4, 2006, at 9:00 a.m. at the Public Service Commission building at 610

North Whitney Way, Madison, Wisconsin.

The Gas and Energy Division of the Commission is the organizational unit responsible for the promulgation of the rule.

**Contact Person**

The contact person is Paul Helgeson, Project Coordinator, (608) 266-3905.

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## Rule-making notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

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

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

#### Copy of Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4886 or emailing [Richard.bourie@datcp.state.wi.us](mailto:Richard.bourie@datcp.state.wi.us). Copies will also be available at the hearings. To view the proposed rule online, go to: <https://apps4.dhfs.state.wi.us/admrules/public/Home>

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

#### Hearing Date and Location

**Monday, November 13, 2006**

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

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

Handicapped accessible

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

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

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

number of previously licensed white-tailed deer hunting preserves.

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

Statute Interpreted: s. 95.55, Stats.

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

#### Background and Purpose

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

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

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

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

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

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

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

### Federal Programs

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

### Surrounding State Programs

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

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

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

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

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

### Fiscal Impact

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

### Small Business Impact

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

### DATCP Contact Person

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

Dr. Richard Bourie

Department of Agriculture, trade and Consumer Protection  
P.O. Box 8911

Madison, WI 53708–8911

Telephone (608) 224–4886

E-Mail: hearingcommentsAH@datcp.state.wi.us

### Notice of Hearing

#### Medical Examining Board

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 448.05, Stats., the Medical Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend Med 1.06 (3) (b), relating to the requirements for completion of the 3–step sequence of the United States Medical Licensing Examination (USMLE).

#### Hearing Date, Time and Location

**Date:** November 15, 2006

**Time:** 9:00 a.m.

**Location:** 1400 East Washington Avenue

Room 121A

Madison, Wisconsin

#### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email at pamelahaack@drl.state.wi.us. Comments must be received on or before November 24, 2006 to be included in the record of rule-making proceedings.

#### Analysis

Statute interpreted: Section 448.05, Stats.

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

Explanation of agency authority: The Medical Examining Board has the authority under ss. 15.08 (5) (b) and 448.05, Stats., to promulgate rules for the licensure of physicians, including the sequence for completion of the 3–step United States Medical Licensing Examination (USMLE).

Related statute or rule: There are no other statutes or rules other than those listed above.

Plain language analysis: The proposed revision to s. Med 1.06 (3) (b) changes the timeframe for completion of the 3–step USMLE sequence from 7 to 10 years for graduates of the standard M.D. training program. The proposed revision also changes the timeframe for completion of the examinations from 9 years to 12 years for graduates of a combined M.D./Ph.D. medical scientist training program. The proposed rule revision enlarges the timeframe for completion of the sequence by 3 years for each category of graduate.

This rule primarily affects foreign graduates who encounter delays in completing the 3–step examination sequence due to visa and immigration problems. The rule will also affect other graduates, such as medical scientists, who

often experience delays in completing the sequence due to the requirements of their combined programs. Finally, the rule will impact those graduates who encounter obstacles or delays resulting from voluntary or involuntary circumstances and hardships. The current 7-year and 9-year time sequence rule has resulted in an impediment to licensure of qualified applicants.

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

There is no existing or proposed federal regulation relating to these rules.

Comparison with rules in adjacent states:

Illinois:

The state of Illinois requires that applicants for medical licensure must complete USMLE Steps 1, 2 and 3 within 7 years of passing the first step.

Minnesota:

The state of Minnesota requires that applicants must complete USMLE Steps 1, 2 and 3 within 7 years of passing the first examination, and waives the timeframe for M.D./Ph.D. degree graduates.

Iowa:

Applicants for a medical license in the state of Iowa must complete Steps 1, 2 and 3 of the USMLE within 7 years of passing the first examination. Applicants who are graduates of a M.D./Ph.D. program must complete the examination sequence within 10 years after passing the first examination.

Michigan:

The state of Michigan requires that applicants for licensure must pass USMLE Step 3 within 5 years of their first attempt at Step 3.

Summary of factual data and analytical methodologies:

Currently, there are four states which are listed on the Federation of State Medical Examining Board website that have a 10-year rule and five states which have an unlimited time for completion of the examination sequence. Six states waive the completion timeframe for M.D./Ph.D. candidates. For osteopathic physicians, 24 states have no time limit for completion of their examinations. The comparison of the rules in adjacent states was obtained directly from a review of those state rules and information compiled by the Federation of State Medical Boards. The proposed revisions to the rules were based upon recommendations from deans of the state medical schools and medical providers, and an ad hoc advisory panel consisting of members of the Medical Examining Board.

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

The department's physician licensing credentialing specialist recorded USMLE examination completion dates in phone calls received from prospective applicants for a four month period in 2005 and found that 17 prospective applicants would not qualify for licensure under a 7/9 year rule but would qualify under a 9/12 year rule. The Wisconsin Medical Society estimates there are 11,3000 total active physicians in the workforce and that 2,800, or 25%, work in a practice size ranging from 1-9 physicians. Assuming practices with 9 or fewer physicians can be categorized as small businesses, and that applicants are proportionately employed in practices of all sizes, the small business physician hiring pool could increase by at least 17 physicians annually under the new rule. The specialist also suggested that the number of additional physician applicants could be significantly higher because most physician recruiters are

aware of Wisconsin's 7/9 year rule and eliminate Wisconsin from consideration automatically.

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

**Anticipated costs incurred by private sector:**

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

**Fiscal Estimate**

The department estimates that the proposed rule will have no significant fiscal impact.

**Effect on small business:**

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

**Agency Contact Person**

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

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before November 24, 2006, to be included in the record of rule-making proceedings.

**TEXT OF RULE**

SECTION 1. Med 1.06 (3) (b) is amended to read:

Med 1.06 (3) (b) Commencing January 1, 1994, the board accepts the 3-step USMLE sequence as its written or computer-based examination and administers step 3 of the sequence. Minimum standard passing scores for each step shall be not less than 75.0. Applicants who have completed a standard M.D. training program shall complete all 3 steps of the examination sequence within 7 10 years from the date upon which the applicant first passes a step, either step 1 or step 2. Applicants who have completed a combined M.D. and Ph.D. medical scientist training program shall complete all 3 steps of the examination sequence within 9 12 years from the date upon which the applicant first passes a step, either step 1 or step 2. Applicants who have passed a step may not repeat the step unless required to do so in order to comply with the 7-year 10-year or 9-year 12-year time limit. If the applicant fails to achieve a passing grade on any step, the applicant may apply for and be reexamined on only the step failed according to the reexamination provisions of s. Med 1.08 (1).

**Notice of Hearing**

**Natural Resources**

**(Fish, Game, etc.)**

**[CR 06-111]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1), 29.041, 29.519 (1) (b) and 227.11 (2) (a), Stats., interpreting ss. 29.014 (1), 29.041, 29.516 (2) and 29.519 (1)

(b), Stats., the Department of Natural Resources will hold a public hearing on the repeal and recreation of s. NR 25.05 (1) (d), Wis. Adm. Code, relating to commercial fishing open seasons in Lake Michigan for chubs. The proposed rule will repeal a sunset clause pertaining to commercial fishing for chubs in Lake Michigan. Natural Resources Board Order No. FH-34-01 (Clearinghouse Rule No. 01-145) revised commercial fishing depth limits, but included a sunset provision by which the changes would expire on July 1, 2007. The proposed rule would allow the present rules to continue indefinitely. Under those rules, the minimum depth for commercial chub nets is 45 fathoms from January 16 through April 25. If the proposed rule is not adopted and the sunset clause is allowed to take effect, minimum depths would vary by area and season. During January 16 through the end of February, the minimum depth would be 55 fathoms in the northern chub fishing zone and 60 fathoms in the southern chub fishing zone. During March 1 through April 25, the minimum depth would be eliminated.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected: Lake Michigan commercial chub fishers
- b. Description of reporting and bookkeeping procedures required: No new procedures
- c. Description of professional skills required: No new skills

The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

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

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

Monday, **November 13, 2006** at 4:00 p.m.

Manitowoc Room, Lakeshore Technical College, 1290 North Avenue, Cleveland

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

#### **Fiscal Impact**

These changes will have no fiscal implications for state or local government.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until November 25, 2006. Written comments whether submitted electronically or by U.S. mail

will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Horns.

### **Notice of Hearing Natural Resources**

#### **(Environmental Protection – Air Pollution Control)**

**[CR 06-109]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1) and 285.27 (1) (a), Stats., interpreting s. 285.11 (1), Stats., the Department of Natural Resources will hold a public hearing on revisions to ch., NR 440, Wis. Adm. Code, relating to incorporation of revisions and additions to the federal New Source Performance Standards. Under section 111 of the Clean Air Act, the U.S. Environmental Protection Agency is required to promulgate regulations establishing standards of performance of new stationary sources (NSPS). These standards are contained in 40 CFR Part 60. The Department is required, under s. 285.27(1)(a), Stats., to incorporate these standards into rule, and does so in ch. NR 440. Periodically it is necessary to amend ch. NR 440 to address changes the EPA makes to existing NSPS and to incorporate standards promulgated by EPA for new source categories. These proposed revisions address changes made by the EPA between July 1994 and April 2005 to general requirements which apply to all source categories, and to the specific standards for 60 individual source categories. Requirements relating to mercury emission from certain electric steam generating units which EPA promulgated on May 18, 2005 and subsequently amended are not proposed here. Those requirements will be addressed separately in Natural Resources Board Order No. AM-32-05. Standards for 5 source categories not currently included in ch. NR 440 are also being proposed.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have a substantial economic impact on small businesses. The proposed rules are substantively identical to rules already in effect at the federal level. Any small businesses currently subject to the federal requirements will not be impacted by incorporation of these requirements into the Wisconsin Administrative Code. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

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

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

Tuesday, **November 21, 2006** at 1:00 p.m.

Room G09, GEF #2 Building, 101 South Webster Street, Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information



material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266-2856 or by e-mail at Robert.Eckdale@dnr.state.wi.us with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Fiscal Impact**

These changes will have no fiscal implications for state or local government.

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order number AM-05-06.) Written comments on the proposed rule may be submitted via U.S. mail to Mr. Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to Robert.Eckdale@dnr.state.wi.us. Comments may be submitted until December 1, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 532707 or by calling (608) 266-2856.

## **Notice of Hearing Natural Resources**

### **(Environmental Protection – Air Pollution Control)**

#### **[CR 06-110]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 227.14 (1m) and 285.27 (2) (a), Stats., interpreting ss. 285.11 (6) and 285.27 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 460, 463 and 484, Wis. Adm. Code, relating to national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. The U.S. Environmental Protection Agency promulgated the NESHAP for iron and steel foundries on April 22, 2004, and amended this NESHAP on May 20, 2005. The proposed rule incorporates this NESHAP, as amended, into the Wisconsin Administrative Code by creating ch. NR 463, subch. III and Appendix EEEEE in ch. NR 460. Chapter NR 484 is also amended to incorporate by reference two test methods. Since the proposed regulation is already in effect at the national level, there is little discretion for the Department in promulgating this rule. The proposed rule will affect about 26 facilities statewide.

The proposed rule will regulate the emissions of hazardous air pollutants (HAP) from those iron and steel foundries which are major sources of federal HAPs (affected sources). The proposed rule specifies particulate matter, total metal HAP, volatile organic HAP (VOHAP) and triethylamine (TEA) emission limits for various foundry processes, including scrap preheating, metal melting and pouring, and mold making. The rule also specifies operating limits for emission control devices, work practice standards for scrap selection and preheating, and includes operation and maintenance requirements that apply to control devices and capture systems.

Existing affected sources have until April 23, 2007 to achieve compliance. New or reconstructed affected sources

must achieve compliance by April 22, 2004 (if initial startup is before that date) or the date of initial startup. Sources have until their final compliance date to reduce HAP emissions below the major source level and thereby avoid the rule. Sources may also become a synthetic minor HAP source to avoid the rule by obtaining and complying with a federally enforceable permit that restricts HAP emissions prior to the final compliance date.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected: Any small business which is a major source of HAP emissions and which operates an iron or steel foundry will be affected by the rule.

b. Description of reporting and bookkeeping procedures required: All affected sources must submit initial notifications, notification of compliance status, and semiannual compliance reports. Sources must develop and implement an operation and maintenance plan for all air pollutant capture systems and emission control devices. All affected sources must develop a startup, shutdown and malfunction (SSM) plan. All affected sources must keep all records and documentation relevant to compliance with the rule, including copies of all notifications and reports submitted, performance test results, operation and maintenance plans, monitoring data and SSM plans.

c. Description of professional skills required: An environmental scientist or environmental engineer with knowledge of toxic air pollutant emissions, foundry operations and air pollutant emissions, performance testing, air pollution control technologies, compliance strategies and environmental regulations would have the professional skills necessary to ensure compliance with the proposed rule.

The Department's Small Business Regulatory Coordinator may be contacted at [SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us) or by calling (608) 266-1959.

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

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

Thursday, **November 16, 2006** at 10:00 a.m.

Room 511, GEF #2 Building, 101 South Webster Street,  
Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266-2856 or by e-mail at Robert.Eckdale@dnr.state.wi.us with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Fiscal Impact**

These changes will have no fiscal implications for state or local government.

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and

comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order number AM-29-06.) Written comments on the proposed rule may be submitted via U.S. mail to Mr. Eric Mosher, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to [Eric.Mosher@dnr.state.wi.us](mailto:Eric.Mosher@dnr.state.wi.us). Comments may be submitted until November 30, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 532707 or by calling (608) 266-2856.

## Notice of Hearing Occupational Therapists Affiliated Credentialing Board

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Occupational Therapists Affiliated Credentialing Board in ss. 15.085 (5) (b), 227.11 (2) and 448.965, Stats., and interpreting s. 448.967, Stats., the Occupational Therapists Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to create s. OT 3.06 (6) and (7), relating to continuing education waivers.

### Hearing Date, Time and Location

**Date:** November 14, 2006  
**Time:** 9:30 a.m.  
**Location:** 1400 East Washington Avenue  
 Room 121A  
 Madison, Wisconsin

### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Comments must be received on or before November 22, 2006 to be included in the record of rule-making proceedings.

### Analysis

Statute interpreted: Section 448.967, Stats.

Statutory authority: Sections 15.085 (5) (b), 227.11 (2) and 448.965, Stats.

Explanation of agency authority:

Under the existing rules for continuing education requirements, there is no provision which enables the board to grant a postponement or a waiver of those requirements to credential holders in the event they face an illness, disability, or other type of hardship. This amendment would allow the board, on a case by case basis, to grant a postponement or a waiver if it was warranted. In addition, the proposal allows first-time credential holders to complete their continuing education requirements beginning with their first, full two-year licensure period.

Related statute or rule:

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

Plain language analysis:

This proposed rule-making order would allow the board to consider waiving the continuing education requirements when a licensee is unable to complete them due to a hardship. It would also eliminate the need for first time licensees to meet continuing education requirements in the first cycle of licensure.

The rules of other professions permit credentialing authorities to consider circumstances that interfere with completion of continuing education obligations. Typically, the grounds for exception are limited to enumerated exigencies, such as disability, for example, or absence from the country for military service. Allowing for a waiver that is not limited would result in the board receiving requests without a convincing rationale for waiver. Conversely, disallowing all waiver requests prevents the board from acknowledging circumstances that cause hardship and can unjustly deprive a credential holder of his or her right to practice the profession.

First time licensees apply for a license at varying intervals within a renewal period. For applicants who file on a date proximate to the renewal deadline, the continuing education requirement is the same as it is for those who file on a date proximate to the previous renewal date. There is no recognition of the incongruity this creates among applicants or the difficulties it creates for applicants who must complete all continuing education credits in a very limited period of time prior to the renewal date. Some credentialing authorities pro-rate credits. Others waive the requirement altogether. Without such a provision, applicants may delay filing for a license during the first cycle of licensure to avoid fulfilling the complete continuing education obligation on an abbreviated timeline. This could have an adverse impact on patient care, depending on the demand for occupational therapists at any given time.

SECTION 1 addresses two separate items. It exempts those individuals from having to take continuing education between the time they first receive their license until they begin a full two-year licensing period. In addition, it permits the board to grant either a postponement, waiver, or partial waiver of the continuing education requirements based upon prolonged illness, disability, or other grounds that constitute hardship. Each request is to be considered individually.

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

There is no existing or proposed federal regulation relating to continuing education requirements for occupational therapists or occupational therapy assistants.

Comparison with rules in adjacent states:

Minnesota:

Allows licensees issued a license for a period of not less than two years to prorate the number of contact hours required for renewal based on the number of months licensed. A waiver is allowed for extreme hardship. The waiver must be in writing and must state alternative measures if a waiver is granted. A written response to the request specifies the time limitation and required alternative measures, which must be equivalent of the continuing education being waived.

Illinois:

Compliance is not required in the initial cycle of licensure. Waivers may be granted for good cause, which is comprised of military service or hardship, i.e., an incapacitating illness, physical inability to travel to sites of approved programs, or similar extenuating circumstances.

Iowa:

Exemption is allowed for first time licensees at the first renewal. An automatic exemption is allowed for military service, meeting the requirements of another state, government employees assigned to duty outside of the United States, or when absent from a state, if the professional is engaged in active practice under circumstances approved by the board.

Michigan:

Michigan does not require continuing education for renewal of license.

Summary of factual data and analytical methodologies:

The board reviewed the rules of other regulatory boards and discovered many allow for a continuing education waiver and/or a hardship exemption. Discussions were held on the merits of aligning its rules with those that allow for both.

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

The rule change would impose no additional record keeping requirements on small businesses. The rule would not have a disproportionate impact on small businesses.

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

Anticipated costs incurred by private sector:

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

#### Fiscal Estimate

The department finds that the proposed rule will have no significant fiscal impact.

Effect on small business:

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

#### Agency Contact Person

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

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before November 22, 2006 to be included in the record of rule-making proceedings.

#### TEXT OF RULE

SECTION 1. OT 3.06 (6) and (7) are created to read:

OT 3.06 (6) During the time between initial licensure and commencement of a full 2-year licensure period, new licensees shall not be required to meet continuing education requirements.

(7) A licensee may apply to the board for a postponement or waiver of the requirements of this section on the grounds of prolonged illness, disability, or other grounds constituting hardship. The board shall consider each request individually

on its merits and may grant a postponement, partial waiver, or total waiver of the requirements.

## Notice of Hearing Public Instruction

[CR 06-098]

NOTICE IS HEREBY GIVEN That pursuant to s. 227.11 (2) (a), Stats., and interpreting s. 115.881, Stats., the Department of Public Instruction will hold a public hearing as follows to consider the creation of Ch. PI 30, relating to grants for high cost special education. The hearing will be held as follows:

#### Date and Time

November 28, 2006

4:00 – 6:00 p.m.

#### Location

Madison

GEF 3 Building

125 South Webster St.

Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Sandra Berndt at (608) 266-1785 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.wi.gov/pb/rulespg.html>. 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 mail or email address no later than **December 4, 2006**, will be given the same consideration as testimony presented at the hearing.

#### Analysis prepared by the Dept. of Public Instruction

Statute interpreted: s. 115.881, Stats.

Statutory authority: s. 227.11 (2) (a), Stats.

Related statute or rule: None.

#### Explanation of agency authority:

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Section 115.881, Stats., is a new grant program created under 2005 Wisconsin Act 25, that provides additional special education aid for high nonadministrative costs.

Because this is a grant program, rules need to be in place so applicants know what criteria are being used in the awarding of funds.

#### Plain language analysis:

The 2005-07 biennial budget, 2005 Wisconsin Act 25, appropriated \$3,500,000 in 2006-07 for a new grant program to provide funds to a school board, board of control of a cooperative educational service agency, county children with

disabilities education board, or operator of a charter school established under s. 118.40 (2r), Stats., if the applicant incurred, in the previous school year, more than \$30,000 of nonadministrative costs for providing special education and related services to a child and those costs were not eligible for reimbursement under s. 115.88, 115.93, or 118.255, 20 USC 1400 et seq., or federal Medicaid.

Eligible applicants will be required to send the department the total nonadministrative costs incurred in the education of each pupil claimed. The department will then subtract from the reported total nonadministrative cost an average per pupil cost that was reimbursed to the applicants under the federal Individuals with Disabilities Education Act, state special education categorical aid, and federal Medicaid. The department will then multiply that amount that exceeds \$30,000 by .90. If funds are insufficient, the department may prorate.

A new rule chapter will be created to specify the grant application requirements and determine aidable costs for the program.

**Comparison with federal regulations:** Not applicable.

#### **Comparison with rules in adjacent states**

Illinois, Minnesota, Iowa, and Michigan do not have administrative rules regarding high cost special education grant programs.

#### **Summary of factual data and analytical methodologies**

Children with severe disabilities often need costly nursing services and assistive technology, expenses that are currently not eligible for reimbursement under the special education categorical aid appropriation. This issue has been identified for a number of years as a priority by school districts around the state.

In her State of Education address in September 2003, the State Superintendent announced her *Keeping the Promise* initiative, designating \$1.5 million in federal Individuals with Disabilities Education Act (IDEA) discretionary funding to Wisconsin schools for services to children with severe disabilities, specifically targeting direct services to educate children with high-cost special needs. Ultimately, a total of \$2 million was set aside for 2003–04.

Aidable costs under the program include all costs (except administration) related to educating a high-cost student with special educational needs. Costs reimbursed by IDEA flow-through funds, Medicaid and special education categorical aids are deducted. Reimbursement is then calculated at 90 percent of the amount by which the total cost of providing special education and related services to an individual child exceeds \$30,000 in the prior year.

In 2003–04, the first year of operation, 115 local education agencies (109 school districts, three CCDEBs and three CESAs) were approved for reimbursement. Eligible claims under the new program totaled \$3.4 million for 2003–04. Therefore, payments were prorated at approximately 59 percent. Claims are expected to rise significantly over the next few years.

Discretionary federal IDEA funding provided a means to get this critically needed aid program started in 2003–04 and 2004–05. State funding was requested in the department's 2005–07 biennial budget request and was granted through 2005 Wisconsin Act 25 to continue the program and provide adequate reimbursement to school districts for these costs.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:** Not applicable.

**Anticipated costs incurred by private sector:** Not applicable.

#### **Effect on small business**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

#### **Agency contact person**

Stephanie Petska, Director, Special Education, phone: 608/266–1781, or email: stephanie.petska@dpi.state.wi.us

#### **Fiscal Estimate**

Under s. 20.255 (2) (bd), Stats., 2005 Wisconsin Act 25 appropriated \$3,500,000 annually beginning in FY07 for a new grant program to provide funds to a school board, board of control of a CESA, county children with disabilities education board, or operator of a charter school, if the applicant incurred, in the previous school year, more than \$30,000 of nonadministrative costs for providing special education and related services to a child and those costs are not eligible for reimbursement under s. 115.88, 115.93, or 118.255, 20 USC 1400 et seq., or federal Medicaid.

The proposed rules establish approval criteria for awarding additional special education aid as provided in the statute.

The rules will have no costs to local governments or small businesses.

#### **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 Public Service Commission**

Hearing Date: Monday, **December 4, 2006**, 9:00 a.m.

Hearing Location: Public Service Commission, 610 North Whitney Way, Madison, WI

The Public Service Commission of Wisconsin proposes an order to repeal ch. PSC 118.02 (5), (9), and (10), 118.03 (2) and (3) (a), 118.04 (1) and (2) (a) to (d), and 118.05 (4); to renumber and amend PSC 118.05 (6); to amend PSC 118 (title), 118.01, 118.02 (7), 118.04 (2) (e) and (3), 118.05 (1), (2) (intro.) and (3), and 118.06 (1) and (4) (a); to repeal and recreate PSC 118.02 (13) and 118.06 (2); and to create PSC 118.04 (2) (g) and 118.07; relating to a renewable resource credit tracking program.

#### **Analysis Prepared by the Public Service Commission of Wisconsin**

Statutory authority: ss. 196.02 (1) and (3), 196.378 (3) and 227.11, Stats.

Statute interpreted: s. 196.378, Stats.

2005 Wis. Act 141 (Act 141) modified Wisconsin's renewable portfolio standard (RPS), which prescribes minimum levels of electric energy that public utilities and electric cooperatives must produce from renewable resources for delivery to their customers. The new law sets a specific minimum level for each electric provider, using a baseline of the provider's average renewable energy production for the years 2001, 2002, and 2003:

Years	RPS Requirement
2006–2009	Not less than the 2001–2003 baseline percentage
2010–2014	Baseline plus 2 percent
After 2014	Baseline plus 6 percent

Previously, state law had specified a gradually increasing RPS that started with 0.5 percent of retail sales in 2001 and would have risen to 2.2 percent by 2011. Act 141 also changes what is defined as a “renewable facility.” Prior law excluded most of the energy from pre–1998 hydroelectric facilities in the state. Act 141 includes all existing renewable generation for the years 2001–2003 to establish the baseline renewable percentage for each electric provider.

If an electric provider delivers more renewable energy to its customers than its RPS requirement from a “new” renewable facility that is placed in service after December 31, 2003, Act 141 allows the electric provider to create renewable resource credits (RRCs) that can be sold or saved for up to four years for future use. RRCs were also created under prior law, but Act 141 specifies that these old RRCs will expire on December 31, 2011. The proposed rules incorporate these changes in state law and establish an RRC tracking program, which can be either statewide or a multi–state, regional program. The proposed rules also identify the responsibilities of the program administrator, who must establish and operate a system that creates an account for each renewable generation facility, each electric provider, and any wholesale supplier that acts as an aggregator for its members or customers. In addition, the tracking system will record the amount of electricity each renewable facility in the area produces, will issue a certificate for every RRC, and will track RRCs from their creation until an electric provider uses them to meet its RPS or otherwise retires them. The proposed rules give the program administrator authority to audit the records of participating renewable generators and to perform any other function the Public Service Commission may designate.

### Initial Regulatory Flexibility Analysis

The rule will have no effect on small business.

#### TEXT OF PROPOSED RULE

The text of the proposed rule is set forth as Attachment A.

### Fiscal Estimate

The proposed rule changes allow for the establishment of a regional renewable credit tracking system and other changes required by WI Act 141 laws of 2005. There are no additional costs to state or local government as a result of these changes.

NOTICE IS GIVEN that pursuant to s. 227.16 (2) (b), Stats., the Commission will hold a public hearing on these proposed rule changes in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on Monday, December 4, 2006, at 9:00 a.m. This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

### Written Comments

Any person may submit written comments on these proposed rules. The hearing record will remain open for written comments from the public until December 13, 2006. All written comments must include a reference on the filing to docket 1–AC–221. File by one mode only.

Industry: File comments using the Electronic Regulatory Filing system. This may be accessed from the Commission’s website [psc.wi.gov](http://psc.wi.gov).

Members of the Public:

If filing electronically: Use the Public Comments system or the Electronic Regulatory Filing system. Both of these may be accessed from the Commission’s website [psc.wi.gov](http://psc.wi.gov).

If filing by mail, courier, or hand delivery: Address your comments as shown in the box on page 1.

If filing by fax: Send fax comments to (608) 266–3957. Fax filing cover sheet must state “Official Filing,” the docket number 1–AC–221, and the number of pages (limited to 25 pages for fax comments).

### Contact Person

Questions regarding this matter should be directed to Paul Helgeson at (608) 266–3905. Media questions should be directed to Linda Barth, Director of Governmental and Public Affairs at (608) 266–9600. Hearing or speech–impaired individuals may also use the Commission’s TTY number, if calling from Wisconsin (800) 251–8345, if calling from outside Wisconsin (608) 267–1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact Paul Helgeson, as indicated in the previous paragraph, as soon as possible.

#### TEXT OF PROPOSED RULE

SECTION 1. Chapter PSC 118 (title) is amended to read:

#### CHAPTER PSC 118

#### RENEWABLE RESOURCE CREDIT TRACKING PROGRAM

SECTION 2. PSC 118.01 is amended to read:

PSC 118.01 **Scope.** This chapter applies to each Wisconsin electric provider that creates an RRC or uses an RRC to meet the requirements of s. 196.378 (2) (a), Stats.

SECTION 3. PSC 118.02 (5) is repealed.

SECTION 4. PSC 118.02 (7) is amended to read:

PSC 118.02 (7) “Program administrator” means the person ~~responsible for carrying~~ who carries out the administrative responsibilities related to the renewable resource credit ~~trading~~ tracking program.

SECTION 5. PSC 118.02 (9) and (10) are repealed.

SECTION 6. PSC 118.02 (13) is repealed and recreated to read:

PSC 118.02 (13) “RRC tracking program” means a program that tracks the selling, transferring, purchasing, and retiring of RRCs created on or after January 1, 2004.

SECTION 7. PSC 118.03 (2) and (3) (a) are repealed.

SECTION 8. PSC 118.04 (1) and (2) (a) to (d) are repealed.

SECTION 9. PSC 118.04 (2) (e) is amended to read:

PSC 118.04 (2) (e) Renewable energy that would meet the definition of an RRC under s. ~~PSC 118.02(10) 196.378(1)(i),~~ Stats., except that it consists of less than one MWh, shall constitute a fraction of an RRC. A fractional RRC may not be smaller than 0.01 MWh.

SECTION 10. PSC 118.04 (2) (g) is created to read:

PSC 118.04 (2) (g) 1. An RRC created before January 1, 2004, may be sold or used to meet an electric provider’s minimum percentage requirement under s. 196.378 (2) (a), Stats. The RRCs described in this subdivision may only be used until December 31, 2011, as provided in s. 196.378 (3) (c), Stats.

2. An RRC created on or after January 1, 2004, but produced by a renewable facility that was placed into service before January 1, 2004, may be sold or used to meet an electric

provider's minimum percentage requirement under s. 196.378 (2) (a), Stats., only if the RRC constituted an incremental increase in output from the renewable facility due to capacity improvements that were made on or after January 1, 2004, as provided in s. 196.378 (3) (a) 2., Stats. If the renewable facility was originally constructed prior to January 1, 2004, but is entirely replaced with a new and more efficient facility, all of the output from the new facility constitutes an incremental increase and can be used to create RRCs. The RRCs described in this subdivision may only be used through the fourth year after their creation, as provided in s. 196.378 (3) (c), Stats.

3. An RRC created on or after January 1, 2004, that is produced by a renewable facility placed into service on or after January 1, 2004, may be sold or used to meet an electric provider's minimum percentage requirement under s. 196.378 (2) (a), Stats. The RRCs described in this subdivision may only be used through the fourth year after their creation, as provided in s. 196.378 (3) (c), Stats.

SECTION 11. PSC 118.04 (3) is amended to read:

PSC 118.04 (3) When an RRC is credited to an electric provider's account ~~under sub. (2)~~, the account owner may sell or transfer the RRC to another electric provider. Any person selling or transferring an RRC shall report the sale or transfer to the program administrator within 10 days of the transaction. The program administrator shall then credit the RRC account of the new owner and debit the RRC account of the prior owner. An RRC may continue to be sold or traded only if each seller or transferor reports the transaction to the program administrator within 10 days of its consummation.

SECTION 12. Section PSC 118.05 (1), (2) (intro.) and (3) are amended to read:

PSC 118.05 (1) (a) An electric provider may only use the energy of a certified renewable facility for creation of an RRC. The commission shall certify renewable facilities or it may delegate this responsibility to the program administrator.

(b) The program administrator may not award an RRC before the date that ~~the commission certifies~~ a renewable facility is certified, but the program administrator may award an RRC for energy that a certified renewable facility produced subsequent to the date ~~the commission received the it delivered its~~ request for certification.

(2) (intro.) To obtain ~~commission~~ certification, the electric provider generating or purchasing energy from a renewable facility, or a designated representative, shall provide the following ~~registration~~ information in a format approved by the commission:

(3) ~~The commission shall inform both the program administrator and the program administrator shall inform~~ the electric provider, or its designated representative, whether it has certified a renewable facility for which it has received an application under sub. (2).

SECTION 13. Section PSC 118.05 (4) is repealed.

SECTION 14. Section PSC 118.05 (6) is renumbered PSC 118.06 (5) and is amended to read:

PSC 118.06 (5) The program administrator may not create award RRCs for energy produced by a decertified renewable facility.

SECTION 15. Section PSC 118.06 (1) is amended to read:

PSC 118.06 (1) The commission shall, using a competitive process, contract with a program administrator who may operate either a statewide or a regional RRC tracking program.

SECTION 16. Section PSC 118.06 (2) is repealed and recreated to read:

PSC 118.06 (2) The program administrator shall:

- (a) Create an account for each electric provider.
- (b) Create an account for each certified renewable facility that participates in the tracking program and record the amount of metered MWh sold at retail that is reported for the facility.
- (c) Register each renewable facility the commission has certified, including the following data about the facility:
  1. Its electric provider's account number.
  2. Its location, owner, technology, date placed in service, and rated capacity.
  3. Its expected annual energy production.
  4. Information about the facility's meter that allows the program administrator to verify its accuracy.
  5. Any additional data the commission considers necessary for proper operation of the tracking program.
- (d) Establish and maintain a system for tracking RRCs that does all of the following:

1. Issues a unique electronic certificate for each MWh of renewable energy produced by a certified renewable facility that is located in the area covered by the tracking system, that is owned by a participating electric provider, or that is under contract to deliver electric energy to a participating electric provider. The certificate shall identify which certified renewable facility produced the MWh, when it was produced, and any other characteristics the commission considers necessary.

2. Records RRC ownership and each transfer between account holders.

3. Retires each RRC that meets any of the following:

- a. An electric provider uses to meet all or part of its minimum percentage requirement under s. 196.378 (2) (a), Stats.

- b. Becomes four years old.

- c. An electric provider chooses to retire for any other reason.

- (e) Audit registered renewable facilities, as needed, to verify the accuracy of metered production data.

- (f) Track and report each electric provider's compliance with the minimum percentage requirement under s. 196.378 (2) (a), Stats.

- (g) Perform any other function the commission may designate.

SECTION 17. Section PSC 118.06 (4) (a) is amended to read:

PSC 118.06 (4) (a) Annually, the program administrator shall report to the commission the costs incurred in operating the RRC ~~trading~~ tracking program and recommend an assessment of these costs to electric providers and other tracking system participants that hold RRC accounts. ~~The program administrator shall base part of this proposed assessment of costs on the number of each electric provider's RRC transactions, the size of these transactions, or both. These factors shall determine how a majority of the costs are assessed.~~

SECTION 18. Section PSC 118.07 is created to read:

PSC 118.07 **Aggregation and allocation by wholesale suppliers.** If a wholesale supplier aggregates the minimum percentage requirements of its members or customers under s. 196.378 (2) (a), Stats., or allocates RRCs among its members or customers, it shall do so in a manner that is acceptable to the members or customers.

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## Rule orders filed with the revisor of statutes bureau

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

### **Corrections (CR 06-066)**

An order affecting ch. DOC 332, relating to the establishment of an annual sex offender fee to partially offset the costs of monitoring persons who are on probation, parole or extended supervision.

Effective 12-1-06.

### **Employment Relations Commission (CR 06-061)**

An order affecting ch. ERC 33 Appendix Forms A, B and C, relating to procedures for the administration of the Municipal Employment Relations Act.

Effective 12-1-06.

### **Health and Family Services (CR 06-035)**

An order affecting chs. HFS 62 and 75, relating to assessment and services for drivers with alcohol or controlled substance problems.

Effective 12-1-06.

### **Health and Family Services (CR 06-076)**

An order affecting ch. HFS 137, relating to prescribing forms for use by physicians, technicians and tissue bank employees when removing organs and tissue, other than cardiovascular tissue from decedents.

Effective 12-1-06.

### **Natural Resources (CR 02-095)**

An order affecting ch. NR 140, relating to groundwater quality standards.

Effective 12-1-06.

### **Natural Resources (CR 05-105)**

An order affecting ch. NR 102, relating to the designation of waters as outstanding or exceptional resource waters.

Effective 12-1-06.

### **Natural Resources (CR 06-024)**

An order affecting ch. NR 135, relating to the reclamation of nonmetallic mining sites.

Effective 12-1-06.

### **Natural Resources (CR 06-026)**

An order affecting chs. NR 504, 506, 514 and 516, relating to landfilling of solid waste.

Effective 1-1-07.

### **Transportation (CR 06-082)**

An order affecting ch. Trans 102, relating to operator's licenses and identification cards and affecting small businesses.

Effective 4-1-07.

### **Workforce Development (CR 06-062)**

An order affecting chs. DWD 218 to 225, relating to procedures for civil rights complaints and affecting small businesses.

Effective 12-1-06.

### **Workforce Development (CR 06-095)**

An order affecting ch. DWD 59, relating to grants supporting community child care initiatives.

Effective 12-1-06.

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## Rules published with this register and final regulatory flexibility analyses

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The following administrative rule orders have been adopted and published in the **October 31, 2006**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.

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

### **Agriculture, Trade and Consumer Protection (CR 05-108)**

An order affecting chs. ATCP 32 and 32, relating to fertilizer and pesticide bulk storage. Effective 11-1-06.

#### **Summary of Final Regulatory Flexibility Analysis**

This rule consolidates and updates current rules related to commercial bulk storage of fertilizer and pesticides. Bulk storage rules are designed to prevent spills that can injure persons, property and the environment. Spill prevention also saves costly environmental cleanups. The Department of Agriculture, Trade and Consumer Protection (DATCP) developed this rule in consultation with an industry advisory committee.

This rule applies to commercial facilities that store unpackaged *bulk* fertilizer or pesticides. This rule does *not* apply to any of the following:

- Manure storage.
- On-farm storage, mixing or loading of fertilizer or pesticides for on-farm use (not for sale or distribution).
- Facilities that store only packaged fertilizer or pesticides.

This rule establishes some new construction standards for fertilizer and pesticide storage facilities. These new standards apply to structures that are constructed *or substantially altered* after the effective date of this rule. This rule will not have a significant impact on an existing facility unless the operator *substantially alters* structures in that facility. Routine maintenance and repair is not considered a *substantial alteration*.

Under this rule, an operator must have construction plans reviewed by a professional engineer, and must submit the construction plans for discretionary review by DATCP. This may entail some additional costs for some operators, but will help prevent much more costly design and construction errors. This rule does *not* require DATCP pre-approval of new construction or alterations. This rule allows design flexibility, consistent with minimum standards.

Improved design and construction of storage facilities will minimize environmental contamination and costly cleanups that pose a large financial risk to storage facility operators. Environmental cleanup costs are typically much higher than preventive design and construction costs. Reduction of cleanup costs will also minimize financial demands on the industry-funded agricultural chemical cleanup program.

Approximately 55% of the businesses affected by this rule are small businesses. These businesses typically operate smaller storage facilities, with smaller structures. Therefore, their compliance costs will typically be lower than for other

affected businesses. DATCP estimates that small businesses will incur compliance costs of \$30,000 per year (total for all small businesses), but will realize long-term cleanup savings of \$200,000 to \$400,000 per year (total for all small businesses). The added costs for a single small business that needs to fully recreate its facility or a small business starting a new facility for bulk pesticide and bulk fertilizer are approximately \$9,500.

The department has attempted to accommodate businesses, including small businesses, by streamlining and simplifying recordkeeping and reporting requirements. This rule eliminates a number of current recordkeeping and reporting requirements that provide little, if any, environmental protection.

The department has attempted to assist all businesses, including small businesses, in the following manner:

DATCP has worked with University of Wisconsin – Extension to spell out minimum design standards for concrete structures (including mixing and loading pads and secondary containment structures), so that engineering firms will not have to design these structures from scratch. The rule also provides a mechanism by which DATCP can review plans and provide constructive suggestions. This will minimize design costs for small businesses.

This rule consolidates and redrafts current rules, so they will be easier to read and understand. This rule eliminates obsolete and unnecessary requirements, and clarifies current requirements.

This rule will also help small businesses by preventing spills that may require costly environmental cleanups. Compliance costs are far less than cleanup costs.

This rule will impose additional costs on some businesses, including small businesses. However, overall industry costs are far outweighed by long-term cost savings.

#### **Summary of Comments by Legislative Review Committees**

On July 13, 2006, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Insurance and to the Assembly Committee on Agriculture. Neither committee took any action regarding the rule.

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

An order affecting ch. ATCP 21, relating to plant pest import controls and quarantines. Effective 11-1-06.

#### **Summary of Final Regulatory Flexibility Analysis**

This rule regulates the import and movement of host materials that may spread infestations of Emerald Ash Borer, Asian Longhorn Beetle, *Phytophthora ramorum* or Hemlock



Woolly Adelgid. Each of these pests has been found in the United States, and each poses a major threat to Wisconsin's forest and urban landscapes. None of these pests has yet been found in Wisconsin.

This rule is designed to prevent and limit the spread of these pests, by regulating imports of host materials, to Wisconsin, from known infested areas. If any of these pests is ever found in Wisconsin, this rule will also affect the movement of host materials from infested areas in this state.

This rule regulates the import and movement of certain host materials from areas infested with Emerald Ash Borer, Asian Longhorned Beetle, *Phytophthora ramorum* or Hemlock Woolly Adelgid. Regulated host materials vary, depending on the pest in question, but include things like nursery stock, firewood, untreated lumber and mulch.

This rule affects a variety of businesses such as nursery growers and dealers, lumber mills, paper mills, firewood sellers, landscapers and loggers. This rule applies to large and small businesses alike. The Department of Agriculture, Trade and Consumer Protection ("DATCP") estimates that 50–60% of the affected businesses are "small businesses."

This rule is designed to prevent the introduction and spread of Emerald Ash Borer, Asian Longhorned Beetle, *Phytophthora ramorum* and Hemlock Woolly Adelgid. These pests pose a grave threat to Wisconsin forest and urban landscapes. This rule will help protect Wisconsin industries, by helping to protect the resources on which they depend. This rule may have some adverse impact on some individual businesses, but that adverse impact is greatly outweighed (even for those businesses) by the protection that this rule affords.

None of the pests regulated by this rule have been detected in Wisconsin to date, so the initial impact of this rule will be limited to businesses that may be importing host materials from infested areas outside this state. The negative effects on those businesses will be small. The rule will help protect Wisconsin importers from pest infestations that could destroy their businesses.

If any of the regulated pests is ever found in this state, the *infestation* may have a major impact on affected businesses. Businesses in infested areas will incur added costs, and some may lose markets for their products. But those consequences will result from the infestation itself, *with or without* this rule.

This rule may add some incremental costs for businesses in infested areas, but will protect businesses in other areas. It will also forestall a more general federal quarantine that could limit exports from the entire state (including exports from uninfested areas).

#### **Summary of Comments by Legislative Review Committees**

On June 20, 2006, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Insurance and to the Assembly Committee on Forestry. Neither the Assembly nor the Senate Committee took action.

#### **Commerce (CR 06–031)**

An order affecting ch. Comm 5, relating to licenses, certifications and registrations. Effective 11–1–06.

#### **Summary of Final Regulatory Flexibility Analysis**

The rules consist of revisions in ch. Comm 5 in order to address some administrative issues that have occurred since the last update of ch. Comm 5. Chapter Comm 5 establishes qualifications and procedures for licensing, certifying and registering various individuals and entities associated with the construction of buildings. The proposed revisions are to reflect recent statutory changes, to clarify the application or intent of certain rules and to provide consistency across certain related credential types. Most of the credentials under ch. Comm 5 have been established under the statutory authority and mandates of chs. 101 and 145, Stats. The proposed rules should have a minimal effect on small business in that most of the credentials under ch. Comm 5 involve individuals and not businesses.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

#### **Health and Family Services (CR 06–021)**

An order affecting ch. HFS 157, relating to protecting public health by regulating the sources and use of ionizing radiation. Effective 11–1–06.

#### **Summary of Final Regulatory Flexibility Analysis**

The rules will increase annual site registration fees for small businesses with x-ray devices. The increase in fees will not have a significant economic impact on small businesses.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

#### **Insurance (CR 05–111)**

An order affecting chs. Ins 6, 26 and 28, relating to agent licensing procedures and requirements and affecting small business. Effective 11–1–06.

#### **Summary of Final Regulatory Flexibility Analysis**

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

#### **Summary of Comments by Legislative Review Committees**

The legislative standing committees had objections to this rule. Agreement was reached with JRCRAR on modifications to the proposed rule. In a September 6, 2006 letter, JCRAR nonconcurred in the Assembly Committee's objection and allowed the modified rule to proceed to final promulgation.

#### **Natural Resources (CR 06–027)**

An order affecting ch. NR 46, relating to the administration of the Forest Crop Law and Managed Forest Law. Effective 11–1–06.

#### **Summary of Final Regulatory Flexibility Analysis**

This rule does affect small business. Small private forest landowners and forest industries voluntarily enrolled under the Forest Crop Law and the Managed Forest Law are required by statute to pay 10% and 5% respectively of the

stumpage value adopted in the zone for the species and wood product volume cut from their land.

**Summary of Comments by Legislative Review Committees**

The rule was reviewed by the Assembly Committee on Forestry and the Senate Committee on Agriculture and Insurance. There were no comments on the proposed rule.

**Natural Resources  
(CR 06-022)**

An order affecting ch. NR 47, relating to the forestry research and development grant program. Effective 11-1-06.

**Summary of Final Regulatory Flexibility Analysis**

The proposed rule does not regulate small businesses; therefore, a final regulatory flexibility analysis is not required.

**Summary of Comments by Legislative Review Committees**

The rule was reviewed by the Assembly Committee on Forestry and the Senate Committee on Agriculture and Insurance. There were no comments on the proposed rule.

**Pharmacy Examining Board  
(CR 06-050)**

An order affecting chs. Phar 2 and 17, relating to a foreign graduate internship. Effective 11-1-06.

**Summary of Final Regulatory Flexibility Analysis**

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be

contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Pharmacy Examining Board  
(CR 06-052)**

An order affecting ch. Phar 8, relating to controlled substances theft and loss reporting requirements. Effective 11-1-06.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Transportation  
(CR 06-043)**

An order affecting ch. Trans 327, relating to motor carrier safety. Effective 11-1-06.

**Summary of Final Regulatory Flexibility Analysis**

This rule will have some minimal adverse impact on small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

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## Sections affected by rule revisions and corrections

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The following administrative rule revisions and corrections have taken place in **October 2006**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### Revisions

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 21

S. ATCP 21.01 (2g), (2r), (6m) and (8w)

SS. ATCP 21.17 to 21.19

##### Ch. ATCP 32 (entire chapter)

##### Ch. ATCP 33 (entire chapter)

#### Commerce

##### Ch. Comm 5

S. Comm 5.003 (22)

S. Comm 5.02

S. Comm 5.06

S. Comm 5.323 (1)

S. Comm 5.51 (6) (c)

S. Comm 5.52 (6) (c)

S. Comm 5.54 (5) (c)

S. Comm 5.625 (4) (c)

S. Comm 5.70 (1)

S. Comm 5.72 (5)

S. Comm 5.91 (8) (b)

S. Comm 5.92 (8) (b)

S. Comm 5.93 (6) (b)

S. Comm 5.94 (6) (b)

S. Comm 5.97 (7) (c)

#### Health and Family Services

##### Ch. HFS 157

S. HFS 157.01 (6), (16)

S. HFS 157.02 (4) to (7), (10), (15)

S. HFS 157.03 (1), (2), (13), (17m), (32), (32m), (46), (57g), (57r), (68), (75m), (82m), (84m), (87m), (98), (101m), (103m), (124m), (140), (141), (143m), (150m), (164m), (185m), (185r), (197m), (198), (199) (b), (200) (intro.) and (c), (201), (210) (a), (d) and (e), (224), (225), (247m), (251m), (279m), (295m), (296), (326), (327), (334), (353), (371m), (376) (b), (390), (398), (402m), (418), (419), (419m), (424), (425), (428)

S. HFS 157.05 (1) (a), (3), (5)

S. HFS 157.09 (2) (a), (c), (d) and (g)

S. HFS 157.10 (3)

S. HFS 157.11 (1) (c)

S. HFS 157.12 (3)

S. HFS 157.13 (1) (i), (4) (c), (d) and (i), (5) (c), (8) (intro.), (10) (d), (11) (d), (17) (b)

S. HFS 157.14 (2) (b)

S. HFS 157.15 (1), (3) (b), (4) (a), (5) (a), (7) (a), (16), (17)

S. HFS 157.22 (1) (a) and (c), (8) (c)

S. HFS 157.25 (2) (a)

S. HFS 157.28 (1) (a)

S. HFS 157.29 (6) (e)

S. HFS 157.31 (1) (a)

S. HFS 157.33 (2), (3) (a)

S. HFS 157.36 (1) (a) and (b), (2)

S. HFS 157.41 (2) (a)

S. HFS 157.42 (1) (a)

S. HFS 157.44 (3) (b) (6) (a) and (e) to (g)

S. HFS 157.45 (11) (c) and (14) (b)

S. HFS 157.51 (1)

S. HFS 157.52 (8) and (10)

S. HFS 157.53 (1) (a) and (d)

S. HFS 157.54 (3) (b)

S. HFS 157.55 (1) (d)

S. HFS 157.56 (4) (intro.) and (5)

S. HFS 157.61 (1) (g), (7) to (10), (12)

S. HFS 157.62 (2) (a), (3) (b), (4) (intro.), (8) (d)

S. HFS 157.63 (1) (b), (2) (b), (3) to (6)

S. HFS 157.64 (4) to (8)

S. HFS 157.65 (1) (intro.), (6) (a), (8) to (10)

S. HFS 157.66 (2)

S. HFS 157.67 (9) (b) and (17), (18)

S. HFS 157.68

S. HFS 157.71 (14)

S. HFS 157.72 (1) (a) and (h), (2)

S. HFS 157.73 (15) (c), (22) (k) and (m)

S. HFS 157.74 (2) (b), (d) and (g), (3) (c), (4) (b)

S. HFS 157.75 (Table)

S. HFS 157.76

S. HFS 157.77 (5)

S. HFS 157.79 (2) (c)

S. HFS 157.80 (1) (a) and (c), (2) (a)

S. HFS 157.81 (3) (a)

S. HFS 157.83 (2) (b)

S. HFS 157.86 (1) (a)

S. HFS 157.88 (3)

S. HFS 157.92 (2) (b) to (d), (3) (a)

S. HFS 157.93 (4) (b) and (d), (5) to (8)

S. HFS 157.94 (2) (b)

S. HFS 157.97

S. HFS 157.98

S. NR 46.30 (1) (e) and (2)

**Ch. NR 47**

S. NR 47.93

**Insurance**

**Ch. Ins 6**

S. Ins 6.57 (1), (2) (intro.) and (3)

S. Ins 6.58 (3) (b) and (5) (a)

S. Ins 6.59 (3), (4) (a), (am), (as), (av) and (ax)

S. Ins 6.61 (3) (f)

S. Ins 6.63

**Ch. Ins 26**

S. Ins 26.03 (3m)

S. Ins 26.04 (2) (f) to (i) and (3)

S. Ins 26.05 (5)

S. Ins 26.07 (1) (f) and (2)

**Ch. Ins 28**

S. Ins 28.04 (1) (a), (b), (d), (f), (g) and (i)

S. Ins 28.06 (6) (a)

S. Ins 28.07 (2) and (4)

S. Ins 28.08

S. Ins 28.09

**Natural Resources**

**Ch. NR 46**

S. NR 46.18 (2) (c) and (e)

**Pharmacy Examining Board:**

**Ch. Phar 2**

S. Phar 2.02 (1) (c)

**Ch. Phar 8**

S. Phar 8.02 (3) (f)

**Ch. Phar 17**

S. Phar 17.04

S. Phar 17.05 (2)

**Transportation**

**Ch. Trans 327**

S. Trans 327.01 (2) (b) to (h)

S. Trans 327.03 (intro.), (2), (7), and (10)

S. Trans 327.05 (3) to (6)

S. Trans 327.07 (2)

S. Trans 327.09 (5) (intro.), (b) and (c), (6) to (13)

**Editorial corrections**

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

**Commerce**

**Ch. Comm 5**

S. Comm 5.10 (2) (a)

S. Ins 6.40 (5) (b)

**Ch. Ins 26**

S. Ins 26.05 (1) (f)

S. Ins 26.06 (1) (a)

**Insurance**

**Ch. Ins 6**

S. Ins 6.12 (1) (a)

**Ch. Ins 28**

S. Ins 28.06 (1) (a)

**Errata**

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

**Natural Resources**

**Ch. NR 726 Appendix A**

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## Executive orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 171.** Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Principal John Klang of Weston High School.

**Executive Order 172.** Directing the Department of Health and Family Services and the Department of Workforce Development to meet and confer with family child care providers in order to improve the delivery of quality child care services.

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## Public notices

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### Health and Family Services

#### *(Medical Assistance Reimbursement of Physicians)*

The State of Wisconsin reimburses physicians for medical services provided to Medical Assistance recipients under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the Wisconsin Department of Health and Family Services (the Department), is called Medicaid or Medical Assistance (MA). Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect for physician services. The Department is proposing to establish an additional section of the plan relating to physician services reimbursement.

#### **Proposed Change**

The Department proposes to provide supplemental payments for services provided by physicians who are members of medical practice groups affiliated with public governmental hospitals in order to recognize the unique role of these providers in the State Medicaid healthcare delivery system. The estimated fiscal effect of these changes in State Fiscal Year 2006–07 is approximately \$19.5 million all funds, (\$11.3 million federal financial participation (FED) and \$8.2 million state expenditures). The change is effective November 1, 2006.

#### **Copies of Proposed Change**

Copies of the proposed change will be sent to every county social services or human service department main office where they will be available for public review. For more information, interested persons may fax or write to:

Hospitals, Physicians and Clinics Section  
Division of Health Care Financing  
P.O. Box 309  
Madison, WI 53701–0309  
Fax: (608) 266–1096

Written comments on the proposed changes should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. at:

Division of Health Care Financing  
Room 350, State Office Building  
One West Wilson Street  
Madison, WI

The State of Wisconsin  
Department of Administration  
Bureau of Document Services  
Document Sales and Distribution Section  
P.O. Box 7840  
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