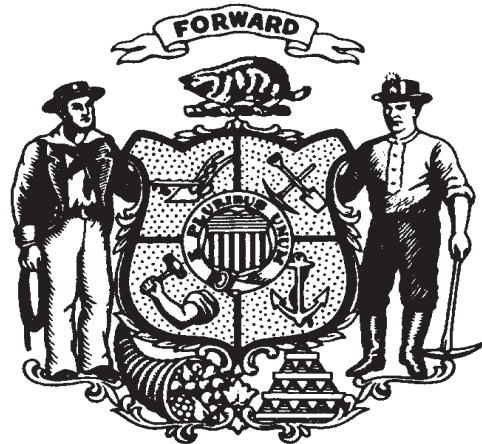


Wisconsin Administrative Register

No. 604



Publication Date: April 14, 2006

Effective Date: April 15, 2006



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Table of contents

Emergency rules now in effect.	Pages 5 to 10
Agriculture, Trade and Consumer Protection:	Rules relating to a poultry flock certification program.
Commerce:	<u>Commercial Buildings, Chs. Comm 61 to 65</u> Rules relating to automatic fire suppression for student housing facilities serving colleges and universities.
Elections Board:	Rules relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee.
Insurance:	Rules relating to small employer uniform employee application for group health insurance.
Natural Resources:	<u>Fish, Game, etc., Chs. NR 1—</u> Rules relating to the administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program. Rules relating to hunter education fees. Rules relating to master logging certification scholarships. Rules relating to commercial fishing for lake trout in Lake Superior. Rules relating to the issuance of turkey hunting permits. Rules relating to the forestry research and development grant program. Rules creating s. NR 45.04 (1) (g) , relating to regulation of firewood entering and exiting department lands and affecting small businesses. [First Appearance] <u>Environmental Protection–Water Regulation, Chs. NR 300—</u> Rules relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.
Revenue:	Rules relating to the computation of the apportionment fraction by multistated public utilities and telecommunications companies. Rules relating to electronic funds transfer, information returns and wage statements.
Technical College System Board:	Rules relating to training program grants.
Transportation:	Rules relating to motor carrier safety regulations.

Workforce Development:	<p><u>Labor Standards, Chs. DWD 270–279</u> Rules relating to overtime pay for employees performing companionship services.</p> <p><u>Public Works Construction Projects, Chs. DWD 290–294</u> Rules relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.</p>
Scope statements.	Pages 11 to 16
Corrections:	Rules affecting rules relating to establishing an annual fee to partially offset the costs of monitoring persons who are required to register as sex offenders and who are in the custody of the department or who are on probation, parole, or extended supervision.
Health and Family Services:	<p>Rules affecting chs. HFS 110 and 111, relating to emergency medical technicians (EMTs).</p> <p>Rules affecting ch. HFS 129, relating to the certification of programs and requirements for training and testing of nurse aides, home health aides, and hospice aides.</p>
Insurance:	<p>Rules affecting ch. Ins 9, relating to the matters governed by the suspended provisions.</p> <p>Rules affecting s. Ins 9.32, relating to JCRAR suspended provisions.</p>
Natural Resource:	Rules affecting ch. NR 22, relating to Wisconsin–Iowa boundary waters.
Public Service Commission:	<p>Rules affecting statewide energy efficiency and renewable resource programs.</p> <p>Rules affecting ch. PSC 118, relating to changes found in 2005 Wis. Act 141 regarding renewable resource credits.</p> <p>Rules affecting ch. PSC 135, relating to changes to the federal pipeline safety code that have been enacted since the last revisions to the state pipeline safety code were enacted.</p> <p>Rules affecting ch. DWD 59, grants supporting community child care initiatives.</p>
Submittal of rules to legislative council clearinghouse.	Pages 17 to 18
Commerce:	Rules affecting ch. Comm 5, relating to licenses, certifications and registrations.
Kickapoo Reserve Management Board:	Rules affecting ch. KB 1, relating to user fees.
Natural Resources:	<p>Rules affecting ch. NR 46, relating to the administration of the Forest Crop Law and Managed Forest Law.</p> <p>Rules affecting s. NR 47.93, relating to the forestry research and development grant program.</p>

Rules affecting chs. NR 135 and 340, relating to reclamation of nonmetallic mining sites.

Rules affecting chs. NR 127, 128, 160 and 166, relating to safe drinking water loan program.

Rules affecting chs. NR 504, 506, 512, 514, 516 and 520, relating to landfilling of solid waste.

Rules affecting s. NR 520.04, relating to balances in the Waste Management Program Revenue account.

Regulation and Licensing:

Rules affecting ch. RL 80, relating to definitions, experience, educational courses, continuing education, conduct and renewal for real estate appraisers.

Revenue:

Rules affecting s. Tax 8.63, relating to liquor wholesaler warehouse facilities.

Workforce Development:

Rules affecting ch. DWD 133, relating to unemployment insurance and temporary help employers and affecting small businesses.

Rule–making notices.

Pages 19 to 31

Agriculture, Trade and Consumer Protection:

Hearing to consider rules relating to minor remedial drafting changes of department rules.

Chiropractic Examining Board:

Hearing to consider rules affecting s. Chir 6.02 (6), relating to adequate education prior to application of new therapies and treatment modalities.

Hearing to consider rules affecting ch. Chir 5, relating to continuing education credit and approval of continuing education programs.

Commerce:

Hearings to consider rules affecting ch. Comm 5, relating to licenses, certifications and registrations.

Kickapoo Reserve Management Board:

Hearing to consider rules affecting ch. KB 1, relating to camping limits at camping areas and fees for hunting and fishing within the Kickapoo Valley Reserve.

Regulation and Licensing:

Hearing to consider rules affecting chs. RL 80 to 87, relating to definitions, experience, educational courses, continuing education, conduct and renewal for real estate appraisers.

Workforce Development:

Hearing to consider rules affecting ch. DWD 133, relating to unemployment insurance and temporary help employers and affecting small businesses.

Submittal of proposed rules to the legislature.

Page 32

Commerce:

CR 05–081 – Ch. Comm 48, relating to petroleum products.

Labor and Industry Review Commission:

CR 05–092 – Chs. LIRC 1 to 4, relating to the rules of practice and procedure before the commission.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board:

CR 05–119 – Ch. MPSW 14, relating to continuing education credits for professional counselors.

	CR 05–120 – Ch. MPSW 8, relating to continuing education credits for social workers.
	CR 05–122 – Ch. MPSW 19, relating to continuing education credits for marriage and family therapists.
Natural Resources:	CR 03–118 – Chs. NR 405 and 408, relating to incorporation of federal changes to the air permitting program.
	CR 04–106 – Chs. NR 406, 407 and 410, relating to linkage of the state air permitting programs with federal changes to the air permitting program and affecting small business.
	CR 05–084 – Ch. NR 118, relating to management zone designations in the Lower St. Croix National Scenic Riverway.
	CR 05–100 – Ch. NR 192, relating to lake monitoring contracts and the citizen lake monitoring network.
	CR 05–102 – Ch. NR 10, relating to small game and expanded turkey hunting in state parks.
	CR 05–101 – Ch. NR 20, relating to hook and line walleye, sauger and hybrids fishing in Sherman Lake, Vilas Co. and Bass (Patterson), Washburn Co.
	CR 05–102 – Ch. NR 10, relating to small game and expanded turkey hunting in state parks.
	CR 05–115 – Chs. NR 25 and 26, relating to allocation of lake trout and commercial fishing for lake trout in Lake Superior.
Nursing Home Administrator Examining Board:	CR 06–010 – Chs. NHA 1 and 3, relating to continuing education.
Revenue:	CR 06–001 – Chs. Tax 1 and 2, relating to electronic funds transfer, information returns and wage statements.
Rule orders filed with the revisor of statutes bureau.	Page 33
Natural Resources:	CR 05–087 – An order affecting chs. NR 46 and 47, relating to the administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program.
	CR 05–106 – An order affecting ch. NR 47, relating to master logging certification scholarships.
Public Service Commission:	CR 05–079 – An order affecting ch. PSC 111, relating to rules concerning the establishment of capital cost ratemaking principles for certain rate base electric generating facilities.
Public notices.	Page 34
Natural Resources:	Notice of availability of a legislative report relating to Wisconsin’s Air State Implementation Plan.
	Notice of availability of a legislative report relating to Wisconsin’s Air State Implementation Plan.

Emergency rules now in effect

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection

Rules adopted revising **chs. ATCP 10 and 11**, relating to a poultry flock certification program.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including the national poultry improvement program (NPIP). The NPIP is designed to prevent the spread of *Salmonella pullorum*, fowl typhoid and, in the case of turkeys, *Mycoplasma gallisepticum*. NPIP is governed by 9 CFR 145 and 147. NPIP enrollment is voluntary, but non–enrolled flocks are subject to certain movement restrictions.

(2) Current DATCP rules prohibit the import, use, sale or movement of poultry, farm–raised game birds or their eggs for breeding or hatching unless they originate from flocks that are enrolled in NPIP and meet NPIP standards. Current DATCP rules also prohibit the exhibition of poultry or farm–raised game birds at a fair, exhibition or swap meet unless they originate from an NPIP “*pullorum*–typhoid clean” or equivalent flock, or are individually tested for *pullorum*–typhoid.

(3) NPIP is primarily designed for large commercial flocks that move birds or eggs in interstate commerce. NPIP requires yearly testing of all sexually mature birds, and routine inspections. Fees for enrollment in the program differ based on flock size and purpose, and range from \$20 to \$200. NPIP enrollment and testing may be cost–prohibitive for small flocks. Current rules restrict market access and exhibition by

small producers of poultry and farm–raised game birds, and impose an unnecessary burden on those producers. Some small producers may be tempted to ignore or subvert current rules, in order to market or exhibit their poultry or farm–raised game birds. That may, in turn, create unnecessary risks of disease.

(4) It is urgently necessary to provide alternative disease monitoring options for small producers of poultry and farm–raised game birds, so that those producers can legally and economically move, market and exhibit their birds. The current lack of alternatives creates an unnecessary economic hardship, and an unnecessary risk of disease spread.

(5) DATCP has proposed rules which would create practical disease monitoring alternatives for small producers of poultry and farm–raised game birds. DATCP is proceeding to adopt those rules by normal rulemaking procedures. However, normal rulemaking procedures require at least a year to complete. A temporary emergency rule is needed to eliminate unnecessary hardship and risk in the short term, and to provide practical and effective disease monitoring for this year’s fair and exhibition season.

Publication Date:	March 3, 2006
Effective Date:	March 3, 2006
Expiration Date:	July 31, 2006
Hearing Dates:	March 31, 2006

Commerce

(Commercial Buildings, Chs. Comm 61–65)

Rules adopted revising **ch. Comm 62**, relating to automatic fire suppression for student housing facilities serving colleges and universities.

Finding of Emergency

Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of a rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. In accordance with sections 101.14 (4) (b) 3., Stats., and the provisions under 2005 Wisconsin Act 78, the department has the responsibility to promulgate rules requiring the installation of automatic fire sprinkler systems in various student housing facilities serving colleges and universities.

2. 2005 Wisconsin Act 78 was published on January 6, 2006, making January 7, 2006 the effective date of the Act.

3. Various provisions of the Act specified the effective date as the trigger to install the automatic fire sprinkler systems.

4. The department recognizes that promulgating this emergency rule will incorporate under the commercial building code, chapters, Comm 61 to 65, specific design and construction standards for new student housing facilities that are consistent with the intent of the Act.

5. The department recognizes that without promulgating this emergency rule, there could be confusion in design of any new student housing to be constructed in the very near future. The omission of the automatic fire sprinkler system during the initial design and construction would potentially place lives at greater risk.

6. In addition, the department recognizes that without promulgating this emergency rule, the confusion in omitting the automatic fire sprinkler system would result in additional costs to retrofit the installation of the system in order to fulfill the statutory obligation based upon the effective date of the Act.

Publication Date: March 4, 2006

Effective Date: March 4, 2006

Expiration Date: August 1, 2006

Elections Board

Rules adopted creating **s. ElBd 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. ElBd 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: July 3, 2005

Hearing Dates: May 18, 2005

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

Insurance

Rules adopted amending **s. Ins 8.49 Appendix 1**, Wis. Adm. Code, relating to small employer uniform employee application for group health insurance.

Finding of emergency

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

The federal government will be implementing Medicare Part D insurance for prescription drugs effective January 1, 2006, therefore s. Ins 8.49 Appendix 1 needs to reflect accurately the status of applicants as it relates to Medicare Part D enrollment. Further, also effective January 1, 2006, the federal government requires employers or insurers to provide an employee specific information on how to elect insurance coverage after a qualifying event subsequent to have waived coverage in accordance with 45 CFR 146.117 (c) (1). In order to have these changes in place prior to January 1, 2006, the rule must be promulgated to add these modifications.

These changes include the ability for the employee applicant to indicate that they carry Medicare Part D effective January 1, 2006 and amends one sentence in the notice portion of the waiver section of the application to add information on how an employee following a qualifying event may opt to obtain health insurance coverage after initially waiving insurance coverage through the small employer group health insurance plan.

Publication Date: November 4, 2005

Effective Date: November 4, 2005

Expiration Date: April 3, 2006

Natural Resources (7)

(Fish, Game, etc., Chs. NR 1—)

1. Rules adopted revising **chs. NR 46 and 47**, relating to the administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules that govern the managed forest law. The state legislature has delegated the appropriate agencies rule-making authority to administer the managed forest law. State statute governing the managed forest law was amended on July 25, 2005 with an initial applicability date of June 1, 2005. This order is designed to bring the administrative code into conformity with the state statutes that govern the managed forest law. Normal rule-making procedures will not allow the establishment of changes necessary to continue processing petitions for managed forest law received from June 1, 2005 to July 1, 2005 (petition deadline). Failure to process these petitions will result in a delay in designation of these lands as managed forest land and a failure to meet statutory deadlines for designation.

Publication Date: October 4, 2005

Effective Date: October 4, 2005

Expiration Date: March 3, 2006

Hearing Dates: October 19, 2005

Extension Through: May 1, 2006

2. Rules were adopted amending **s. NR 19.50** relating to hunter education fees.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate fees for safety education courses. The state legislature has delegated to the appropriate agencies rule making authority to regulate and administer these courses. The department must comply with state law. This order is desired to provide necessary funding for continuation of our quality hunter education program. Normal rule–making procedures will not allow the establishment of the changes by September 1. Failure to modify our rules will result in lost revenues and added expense to the hunter education program.

Publication Date: October 3, 2005
Effective Date: October 3, 2005
Expiration Date: March 2, 2006
Hearing Dates: October 12, 2005
Extension Through: April 30, 2006

3. Rules were adopted amending **ch. NR 47** relating to relating to master logging certification scholarships.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate and administer grant programs. The State legislature has delegated responsibility for rule–making to the Department of Natural Resources. Normal rule–making procedures will not allow the establishment of the rules in time to allocate funds during this fiscal year. Failure to establish rules during FY06 will result in lost revenues and added expense to the Master Logger Certification program.

Publication Date: November 15, 2005
Effective Date: November 15, 2005
Expiration Date: April 14, 2006
Hearing Dates: December 12, 2005
Extension Through: June 12, 2006

4. Rules were adopted amending **ch. NR 25** relating to commercial fishing for lake trout in Lake Superior.

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: The waters of Lake Superior were not part of the extensive off–reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent negotiated amendments to the agreement between the State and the Red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. Failure by the State to do so will not only deprive state fishers of increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

Publication Date: December 15, 2005
Effective Date: December 15, 2005
Expiration Date: May 14, 2006
Hearing Dates: January 13, 2006

5. Rules were adopted revising **s. NR 10.25**, relating to the issuance of turkey hunting permits.

Plain Language Analysis

This rule change will allow the department to issue turkey tags remaining after the initial permit drawing in accordance with state statute, which is first–come, first–served. Additionally, this rule updates code language to accurately describe how permits are currently issued (by zone and by time period) and establishes that no person may obtain more than one turkey carcass tag per day.

Exemption from finding of emergency

2005 Wisconsin Act 25, allowed the department to utilize the procedure under s. 227.24, Stats., to promulgate rules implementing s. 29.164, Stats., for the period before the date on which permanent rules take effect, but may not exceed the period authorized under s. 227.24 (1) (c) and (2), Stats. Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), Stats., 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: February 13, 2006
Effective Date: March 1, 2006
Expiration Date: July 29, 2006
Hearing Dates: April 10, 2006

6. Rules were adopted revising **ch. NR 47**, relating to the forestry research and development grant program.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate and administer grant programs. The State legislature has delegated responsibility for rule–making to the Department of Natural Resources. Normal rule–making procedures will not allow the establishment of the rules in time to allocate funds during this fiscal year. Failure to establish rules during FY06 will result in lost opportunity for Wisconsin interests to compete for federal grants that improve the public health, public good and the environment through the development of alternative renewable energy and biochemical sources from forestry biomass.

Publication Date: March 16, 2006
Effective Date: March 16, 2006
Expiration Date: August 13, 2006
Hearing Dates: April 24 & 26, 2006

7. 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

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

Rules adopted revising **ch. NR 326**, relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

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 recently 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 new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic

beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision–making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004*
Expiration Date: September 16, 2004
Hearing Dates: May 19, 2004

*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

Revenue (2)

1. Rule adopted revising **s. Tax 2.50** and creating **s. Tax 2.502**, relating to the computation of the apportionment fraction by multistated public utilities and telecommunications companies.

Finding of emergency

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

The emergency rule is to prescribe the method to be used for apportioning the apportionable income of the following business entities:

- interstate public utilities, other than telecommunications companies, and
- interstate telecommunications companies.

It is necessary to promulgate this rule order to provide the method of apportionment to be used by interstate public utilities.

Publication Date: December 5, 2005
Effective Date: December 5, 2005
Expiration Date: May 4, 2006
Hearing Dates: February 27, 2006

2. Rules adopted revising **chs. Tax 1 and 2**, relating to electronic funds transfer, information returns and wage statements.

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

Section 71.775, Stats., requires pass–through entities to file and pay withholding tax on the income allocable to their nonresident members. The department has determined that in order to administer this tax in a cost effective manner, it is necessary to require pass–through entities to file and pay the tax by electronic means. The department has also determined that, in the interest of cost effectiveness, a requirement to file Form WT–7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, should also be put in place.

It is necessary to promulgate this rule order to remove the threat of revenue loss to the state as a result of pass–through

entities filing or paying withholding tax or employers filing Form WT–7 by other than electronic means.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and Revisor of Statutes, as provided in s. 227.24, Stats.

Publication Date: December 28, 2005
Effective Date: December 28, 2005
Expiration Date: May 27, 2006
Hearing Dates: March 15, 2006

Technical College System Board

Rules were adopted creating **ch. TCS 17**, relating to training program grants.

Finding of emergency

The Wisconsin Technical College System Board 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 the facts constituting an emergency is:

The 2005 Wis. Act 25 (the 2005–2007 biennial budget bill) created the training program grants under Wis. Stats. §§ 20.292 (1) (eh) and 38.41. An annual appropriation of \$1,000,000 GPR in was established. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state’s economic vitality and health.

The Act requires the WTCS Board to promulgate rules to implement and administer the awarding of these grants. The Board has begun the permanent rule making process for establishing administrative rules for these grants, but cannot complete the required public hearing and review of these rules prior to the middle of the fiscal year. Therefore, to ensure that business in need of skills training and other education may access these services as soon as possible and that appropriated funds are distributed to technical college districts for this purpose, emergency administrative rules must be established immediately.

Publication Date: October 7, 2005
Effective Date: October 7, 2005
Expiration Date: March 6, 2006
Hearing Dates: January 4, 2006
Extension Through: May 4, 2006

Transportation

A rule adopted amending **s. Trans 325.02**, relating to motor carrier safety regulations.

Finding of emergency

The Department of Transportation 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 the facts constituting the emergency is on October 1, 2005 the new hours–of–service regulations became effective. The new regulations apply to drivers and carriers transporting property and passengers by commercial

vehicles in interstate commerce. It is imperative the industry operates under a single set of regulations. Additionally, the Commercial Vehicle Safety Alliance out–of–service criteria is directly formulated to the new hours–of–service. Also pursuant to 49 CFR 350.331(d), States are required to adopt compatible laws or rules to remain eligible for Motor Carrier Safety Assistance Program funding. Currently, Wisconsin receives approximately \$4 million in such funding and that funding could be in jeopardy if Wisconsin does not implement these changes immediately. The Motor Carriers Association has urged the Department to implement these changes as it will help ensure uniformity and increased highway safety.

Publication Date: December 1, 2005
Effective Date: December 1, 2005
Expiration Date: April 30, 2006
Hearing Dates: February 13, 2006

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

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

Finding of emergency

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

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

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

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

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

who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

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

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

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

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

* On April 28, 2004, the Joint Committee for Review of Administrative Rules suspended s. DWD 274.035 created as an emergency rule.

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

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

Finding of emergency

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

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

Publication Date: December 27, 2005
Effective Date: January 1, 2006
Expiration Date: May 31, 2006
Hearing Dates: February 15, 2006

Scope statements

Corrections

Subject

Establishing an annual fee to partially offset the costs of monitoring persons who are required to register as sex offenders and who are in the custody of the Department of Corrections or who are on probation, parole, or extended supervision.

Policy analysis

Objective of the rule. The objective of the rule is to establish an annual fee to partially offset the costs of monitoring persons who are required to register as sex offenders and who are in the custody of the Department of Corrections or who are on probation, parole, or extended supervision.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule, and an analysis of policy alternatives:

2005 Wisconsin Act 25, Section 2223 created section 301.45 (10), Stats., which gives the Department of Corrections authority to establish an annual fee to partially offset the costs of monitoring persons who are required to register as sex offenders and who are in the Department's custody or who are on probation, parole or extended supervision. The annual fee is not to exceed \$50.00.

The alternatives to the proposed policy would result in not establishing the annual fee as provided under the recently passed legislation.

Comparison with federal regulations

There is no current or proposed federal regulation which addresses the subject of the proposed rule.

Statutory authority

Staff time required

The Department estimates that it will take approximately 10 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Health and Family Services

Subject

The Department of Health and Family Services proposes to amend chs. HFS 110 and HFS 111, relating to emergency medical technicians (EMTs).

Policy analysis

There are two levels of emergency medical services care in Wisconsin. They are basic life support and advanced life support. These two levels are distinguished by the skills and medications that can be used by emergency medical services personnel when performing pre-hospital care.

Requirements for basic life support are codified in chs. HFS 110 and HFS 113. At the basic life support level, the department licenses individuals as emergency medical technician–basic (EMT–Basic) and emergency medical technician–intravenous (EMT–Basic IV) and certifies

individuals as First Responders. Requirements for advanced life support are codified in chs. HFS 111 and HFS 112. At the advanced life support level, the department licenses individuals as provisional emergency medical technician–intermediate (Provisional EMT–Intermediate), emergency medical technician–intermediate (EMT–Intermediate), and emergency medical technician–paramedic (EMT–Paramedic).

Licensure, certification, title, and service level designations of emergency medical service personnel are based on the training and competency requirements of the “Wisconsin Revision of the National Standard Curriculum” (Wisconsin Curriculum). The Wisconsin Curriculum is based on the National Standard Curriculum developed by the National Highway Traffic Safety Administration (NHTSA). To receive and maintain licensure as an emergency medical services professional in Wisconsin, an individual must meet the training and competency requirements of the Wisconsin Curriculum for the appropriate discipline.

In 2001, based on national recommendations, the department revised the Wisconsin Curriculum for the EMT–Intermediate level and adopted higher training and competency standards for EMT–Intermediate licensure. EMT–Intermediate licensees who were trained under the 1989 (or earlier) National Standard Curriculum for EMT–Intermediate, while still considered advanced life support, were renamed Provisional EMT–Intermediate and given until December 31, 2005 to meet the new training and competency requirements. As required under s. HFS 111.045, licensees who did not meet the December deadline will be renamed EMT–Basic IV effective July 1, 2006.

The training and competency requirements for the EMT–Basic IV license are the training and competency requirements from the 1989 (or earlier) version of the National Standard Curriculum for EMT–Intermediate which makes the EMT–Basic IV skill set and competencies identical to the skill set and competencies of the Provisional EMT–Intermediate, an advanced life support level of care. Nevertheless, the department codified the EMT–Basic IV service level as basic life support under ch. HFS 110 instead of advanced life support under ch. HFS 111.

The department's placement of the EMT–Basic IV designation as basic life support under ch. HFS 110 has had an inadvertent and negative impact on ambulance service providers and may eventually negatively impact the communities that they serve.

At least 70% of the revenues ambulance service providers generate come from government (Medicare and Medicaid) and non-government insurers that base the level of reimbursement on the level of skilled service the patient receives, that is, whether the patient receives emergency medical services from an individual who is licensed at the basic life support level of care under ch. HFS 110 or 113 or an advanced life support level of care under ch. HFS 111 or 112. As a result, ambulance service providers that employ individuals licensed at the EMT–Basic IV level bear the higher equipment, salary, and training costs associated with

maintaining the advanced life support level of care, but are reimbursed at rates for basic life support level of care.

Statutory authority

Sections 146.50 (4) (c), (5) (b), (6) (b) 2. , (8m), (13), and 227.11 (2), Stats.

Staff time required

The department estimates that it will take approximately 80 hours to develop the proposed rules. The Department will use the assistance of the Emergency Medical Services Advisory Board to develop the continuing education requirements in ch. HFS 110.

Entities affected by the rule

The citizens of Wisconsin, counties, emergency medical technicians, and ambulance service providers

Comparison with federal regulations

There are no federal regulations that are governing or applicable to these rules.

Health and Family Services

Subject

The Department of Health and Family Services proposes to modify ch. HFS 129, relating to the certification of programs and requirements for training and testing of nurse aides, home health aides, and hospice aides.

Policy analysis

Chapter HFS 129 establishes conditions of certification of instructional programs, including standards for instructors, curriculum and criteria for the competency evaluation programs for persons who work as nurse aides in hospitals, nursing homes, facilities for the developmentally disabled, home health agencies or hospices. HFS 129 also establishes standards for the development of a registry of persons who have satisfactorily completed the training program, competency program or who otherwise are eligible for listing in the registry.

This Statement of Scope replaces the Statement of Scope published in May 2003 to include notice of additional changes that the department proposes to make due to recent modifications to the program including the requirements for the training and testing of feeding assistants as set forth under 42 CFR 483.35 and 483.160, medication aides as set for the under 42 CFR 60, and the process to waive the two–year prohibition of a nurse aide training program under Public Law 105–15 (H.R. 968).

The Department proposes to revise ch. HFS 129 for several reasons:

1. To include requirements for the training and testing of feeding assistants and medication aides.

Feeding assistants differ from nurse aides in that a feeding assistant may only assist residents who have no feeding complications with the activities of eating and drinking. A medication aide is a nurse aide who is also approved to administer medications under the supervision of a licensed nurse.

2. To reflect the Department’s decision to standardize the administration and operation of nurse aide competency evaluation statewide by contracting for this service.

Federal regulations set forth under CFR 483.152 and 483.154 authorize states to choose to offer a nurse aide

training and competency evaluation program, or to review, and approve or disapprove program applications upon request. The Department has been reviewing, and approving or disapproving nurse aide training and competency evaluation programs based on standards in ch. HFS 129.08. Anyone who meets those standards may conduct a testing program.

However, the Department believes that specifying standards for competency evaluation programs cannot assure the maintenance of neutral and objective facility–sponsored instructional and competency evaluation tests that are free from possible conflicts of interest posed by the need to meet facility staffing requirements. Therefore, the Department proposes to modify ch. HFS 129 to reflect the Department’s contracting out the implementation of such competency testing.

3. To improve the accuracy and integrity of the nurse aide registry.

Under 42 CFR 483.152 (2), s. 146.40 (4g), Wis Stats., and ch. HFS 129.10 of the Wisconsin Administrative Code, the Department is required to maintain a list, known as a “registry,” of all persons deemed qualified to work in Wisconsin as a nurse aide. Aside from committing an offense that would bar a person from remaining on the list, the Department intends to add state provisions for removing a person’s name from the list. The Department believes that the list of qualified nurse aides, currently numbering over 183,000, contains many persons who no longer are available to or interested in working as a nurse aide. Therefore, the Department intends to modify ch. HFS 129 to require nurse aides to periodically update their registration information and, in the process, allow the Department to maintain a more accurate list of nurse aides. Periodic updating will also provide the Department the opportunity to verify the information provided by nurse aides.

4. To clarify who may be included on the registry and who is eligible to work as a nurse aide and, specifically, as a medication aide. The Department will also clarify the circumstances under which a person not currently included on the registry may work in a health care facility, such as an RN, LPN, etc.

5. To make ch. HFS 129 more consistent with current federal regulations governing nurse aides.

The Department proposes to update aspects of ch. HFS 129 to reflect federal requirements established since ch. HFS 129 was originally promulgated April 1992. Specifically, the Department will propose to incorporate federal requirements relating to:

Withdrawal of Department approval of a nurse aide training and competency evaluation program or a nurse aide competency evaluation program if the entity providing the program refuses to permit unannounced visits by the Department.

Nurse aide training needing to be performed by or under the general supervision of a RN who possesses a minimum of 2 years of nursing experience, at least 1 year of which must be in the provision of long term care facility services.

The inability of a facility to charge fees for training and competency testing to a person who is employed by or has received an offer of employment from a health care facility. In addition, in the case of a person becoming employed by federally certified nursing home within 12 months after completing a training and testing program, the requirement for the Department to reimburse the person for the costs of such training and testing.

Requiring that the skills demonstration part of the evaluation be performed in a facility or laboratory setting comparable to the setting in which the person will function as a nurse aide and be administered and evaluated by a RN with at least 1 year's experience in providing care for the elderly or the chronically ill of any age.

Requiring a competency testing program to use a system that prevents disclosure of both the pool of questions and the individual competency evaluations.

Requiring that the skills demonstrated must consist of a demonstration of randomly selected items drawn from a pool consisting of the tasks generally performed by nurse aides.

Establishing what happens if a person does not complete the evaluation satisfactorily, and impose a maximum number of three times that person may attempt to complete the evaluation successfully.

6. To expand the mechanisms available to the Department for enforcing compliance of training and testing programs.

Existing enforcement options in ch. HFS 129.05 (2) (c) are limited to suspension or revocation of certification or imposing a plan of correction. Although these are valuable enforcement tools, they do not give the Department the flexibility it needs to tailor its response to the severity of non-compliance with this chapter. The Department will propose to revise ch. HFS 129 to include additional enforcement options such as requiring a training or competency program whose approval has been revoked to remain ineligible to submit a new nurse aide training or testing program application for a period of up to one year, issuing a statement of deficiency and placing conditions on certification. The Department also will propose additional enforcement penalties for instructors and examiners who fail to follow program requirements.

7. To include the feeding assistant training and testing program requirements.

The Department proposes updating ch. HFS 129 to include reference to federal regulations set forth under CFR 483.35 and 483.160 which authorize states to choose to offer a paid feeding assistant training and competency evaluation program, or to review, and approve or disapprove program applications upon request. This training and testing is conducted in nursing homes or intermediate care facility for persons with mental retardation (ICFs/MR), to assist residents who have no feeding complications with the activities of eating and drinking. The feeding assistant is not permitted to provide any other nursing or nursing related service.

8. To include the medication aide training and testing program requirements.

Federal regulations set forth under 42 CFR 483.60 permit the use of unlicensed personnel, if State law permits, to administer drugs under the general supervision of a licensed nurse. This training and testing is conducted in nursing homes, technical colleges and private enterprises. The Department proposes to update ch. HFS 129 to include these medication aide requirements.

9. To include the process for requesting, reviewing and approving or disapproving waivers to Federal sanctions to training programs.

]The Department proposes to include reference to Public Law 105–15 (H.R. 968), revised specific provisions of the Social Security Act, which permits a State to waive the two–year prohibition of Nurse Aide Training offered in (not by) certain nursing homes if the State:

Determines there is no other such program offered within a reasonable distance of the facility,

Assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and

Provides notice of such determination and assurances to the State long term care ombudsman.

Statutory authority

The Department's authority to promulgate rules is under sections 146.40 (5) and 227.11 (2) (a), Stats.

Staff time required

The Department estimates that it will take approximately 50 hours to draft the rulemaking order. The Department will also seek the participation of the Bureau on Aging and Long Term Care, the Department of Workforce Development, the Department of Public Education, the Wisconsin Association of Homes and Services for the Aging, the Wisconsin Health and Hospital Association, the Wisconsin Health Care Association, the Wisconsin Technical College System, the Wisconsin Long Term Care Workforce Alliance and private industry.

Entities affected by the rule

Facilities for the Developmentally Disabled, Home Health Agencies, High Schools, Hospice Agencies, Hospitals, Nursing Homes, Private Programs, Technical Colleges, State Agencies, and Universities.

Comparison with federal regulations

Federal conditions of participation for the Registry of nurse aides, nurse aide training and testing programs, and training of paid feeding assistants are in the Code of Federal Regulations, 42 CFR 483. These regulations establish conditions and standards for maintenance and operation of a nurse aide registry, and for conducting training and testing programs for nurse aides and paid feeding assistants. State and federal regulations for registry services and the training and testing of nurse aide and paid feeding assistants are comparable; however, the state requirements augment more general federal regulations by providing specificity in certain areas. The intent of these regulations is to foster safe and adequate care and treatment of clients by these caregivers.

Insurance

Subject

Objective of the rule. By motion on March 1, 2006 the Joint Committee for Review of Administrative Rules (JCRAR) voted to suspend specific subsections of ch. Ins 9, Wis. Adm. Code. At the hearing, JCRAR asked the Office to modify those same provisions by rule. The Office will consider modifying ch. Ins 9, Wis. Adm. Code, with respect to the matters governed by the suspended provisions. Modifications under consideration include: deleting the term "limited scope plan" and replacing it with the appropriate plan or plans including defined network, preferred provider and limited service health organization; modify the emergency medical care provisions, modify language for insurers related to use of utilization management, and modify language related to providers hours of operation.

Policy analysis

A description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives: Revisions to ch. Ins 9, Wis.

Adm. Code, became effective March 1, 2006. New policies proposed for consideration in this notice of scope include elimination of application of the revised rule to limited scope plans, consider whether the revised rule provides the appropriate standard for coverage of emergency care treatment, and adjusting the language of the revised rule as it relates to utilization management and provider hours of operation. In accordance with the Office's agreement to address the JCRAR's motions, the Office intends to modify specific portions of the revised ch. Ins 9, Wis. Adm. Code.

There is no viable alternative to establishing by rule the requirements for these health insurance products. The statutory framework contained within ch. 609 and s. 632.85, Wis. Stats., raise the issues that the proposed rule will address.

Statutory authority

Sections 601.42 (3), 609.20, 609.38, and 632.85, Wis. Stats.

Staff time required

200 hours.

Entities affected by the rule

The proposed rule will affect insurers which offer defined network plans, health maintenance organizations, limited scope plans, preferred provider plans and limited service health organization plans. Insurers will be required to revise their relationships, including provider and insurance contracts, with health care providers, health care provider networks, employers and individuals.

Comparison with federal regulations

The Office is unaware of any proposed or existing federal regulation that is intended to address the activities to be regulated by this proposed rule.

Insurance

Subject

Objective of the rule. By motion on March 1, 2006 the Joint Committee for Review of Administrative Rules (JCRAR) voted to suspend s. Ins 9.32 (2) (c) and (e) 1., Wis. Adm. Code, and the phrase "(c) and " in s. Ins 9.33, Wis. Adm. Code. At the hearing, JCRAR requested the Office to modify these provisions by rule. The Office, after consulting with interested parties, including consumer representatives, insurers, and representatives of Wisconsin health care providers, will consider appropriate modifications to ch. Ins 9, Wis. Adm. Code, to address the topic of the JCRAR suspended provisions.

Policy analysis

Chapter Ins 9, Wis. Adm. Code, became effective March 1, 2006. Chapter Ins 9 includes the provisions cited above which address the circumstances where an operation or procedure is performed by an in–panel provider but some ancillary services, such as anesthesiology, radiology or lab tests, are performed by non–participating providers. OCI will, after consulting with interested parties, consider whether there are alternative standards, or alternative implementation, that may more appropriately address this matter than the standards included in the suspended provisions of revised ch. Ins 9, Wis. Adm. Code.

There is no viable alternative to establishing by rule the requirements for these health insurance products. The statutory framework contained within ch. 609 and s. 632.85, Wis. Stats., raise the issues that the proposed rule will address.

Statutory authority

Sections 601.42 (3), 609.20, 609.38, and 632.85, Wis. Stats.

Staff time required

200 hours.

Entities affected by the rule

The proposed rule will affect insurers which offer defined network plans, health maintenance organizations, preferred provider plans and limited service health organization plans. Insurers will be required to revise their relationships, including provider and insurance contracts, with health care providers, health care provider networks, employers and individuals.

Comparison with federal regulations

The Office is unaware of any proposed or existing federal regulation that is intended to address the activities to be regulated by this proposed rule.

Natural Resources

Subject

Objective of the rule. Modifications to portions of ch. NR 22, pertaining to Wisconsin–Iowa boundary waters. The proposed changes would implement harvest restrictions for commercially–caught shovelnose sturgeon in Wisconsin–Iowa waters of the Mississippi River.

Policy analysis

The Department is beginning the process of recommending changes to Wisconsin administrative code relating to commercial fishing for shovelnose sturgeon. The Department anticipates requesting hearings on these changes in June, 2006, and holding hearings, if approved, in August 2006.

Statutory authority

ss. 29.014, 29.041, and 29.516 Stats.

Staff time required

The Department anticipates spending approximately 160 hours in the rule development process.

Entities affected by the rule

Fewer than five commercial fishermen licensed by Wisconsin will be affected by the proposed rule changes.

Comparison with federal regulations

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

Public Service Commission

Subject

Objective of the rule. This rulemaking will create rules regarding statewide energy efficiency and renewable resource programs as required under 2005 Wisconsin Act 141.

Policy analysis

2005 Wisconsin Act 141 revises the statutes to create a structure under which energy utilities collectively establish and fund statewide energy efficiency and renewable resource programs that will help achieve environmentally sound and adequate energy supplies at reasonable cost. These rules will address issues such as:

Procedures for contracting with program administrators.

Criteria for selection of program administrators.

Procedures and criteria for Commission review of contracts with program administrators.

Procedures and criteria for Commission review of programs.

Minimum requirements for the programs.

Comparison with federal regulations

The Commission is unaware of any federal regulation in this area.

Statutory authority

Wis. Stat. ss. 196.02 (3), 196.374 (3) and 227.11 (2)

Staff time required

The Commission estimates that approximately 500 hours of Commission staff time will be required in this rulemaking.

Other resources necessary to develop rule

Commission staff may meet and consult with former members of the Governor's Task Force on Energy Efficiency and Renewables during the course of this rulemaking.

Entities affected by the rule

The rulemaking will affect investor–owned and municipal electric and natural gas utilities, and retail electric cooperatives.

Public Service Commission

Subject

Objective of the rule. This rulemaking will revise Wis. Admin. Code ch. PSC 118 to reflect changes found in 2005 Wisconsin Act 141 regarding renewable resource credits.

Policy analysis

2005 Wisconsin Act 141 revises Wis. Stat. s. 196.378 regarding renewable energy sources and renewable resource credits. These credits may be generated and used by a utility to meet its required renewable energy percentage, or sold to another utility for its use in meeting its percentage. These rules will address issues such as the requirements for creation and use of a renewable resource credit and a regional credit tracking system.

Comparison with federal regulations

There are various federal regulations concerning renewable energy, but the Commission is not aware of any federal regulation in this specific area.

Statutory authority

Wis. Stat. ss. 196.02 (3), 196.374 (3) and 227.11 (2).

Staff time required

The Commission estimates that approximately 500 hours of Commission staff time will be required in this rulemaking.

Other resources necessary to develop rule

Commission staff may meet and consult with former members of the Governor's Task Force on Energy Efficiency and Renewables during the course of this rulemaking.

Entities affected by the rule

The rulemaking will affect all electric providers and wholesale suppliers. It may also affect the members or customers of a wholesale supplier. (*See* Wis. Stat. ss. 196.378 (1) (c) and (p)).

Public Service Commission

Subject

Objective of the rule. The proposed rule revisions adopt, for state purposes, changes to the federal pipeline safety code that have been enacted since the last revisions to the state pipeline safety code were enacted. The state has adopted federal pipeline safety provisions in Wis. Admin. Code ch. PSC 135.

Policy analysis

Under an agreement with the federal Department of Transportation, Office of Pipeline Safety, the Commission is authorized to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 CFR Parts 192, 193 and 199. As part of the agreement, the Commission agrees to adopt those parts of the federal code that apply to pipeline safety. The state adopts the federal pipeline safety code in Wis. Admin. Code s. PSC 135.019. The Commission last promulgated revisions to s. PSC 135 in 2003. Since then, the federal DOT has adopted several final rules which revise the pipeline safety code. These changes include:

Federal Amendment 192–94, relating to consensus industry standards and various technical standards. This rule took effect July 14, 2004.

Federal Amendment 192–95, relating to pipeline integrity management in high consequence areas. This rule took effect on January 14, 2004.

Federal Amendment 192–96, relating to the operation and capacity of existing pressure limiting and regulating stations on gas pipelines, and establishing an appropriate pressure limit. This rule took effect on September 14, 2004.

Federal Amendment 192–97, relating to transmission lines accommodating the passage of internal inspection devices. This rule took effect on July 28, 2004.

Federal Amendment 192–98, relating to periodic underwater inspections of pipeline facilities located in the Gulf of Mexico and its inlets in waters less than 15 feet deep. This rule took effect on September 9, 2004.

Federal Amendment 192–99, relating to the requirements for pipeline operators to develop and implement public awareness programs. This rule took effect June 20, 2005.

Federal Amendment 192–100, relating to programs conducted by operators of gas and hazardous liquid pipelines to qualify individuals who perform certain safety–related tasks on pipelines. This rule took effect July 1, 2005.

In this proceeding, the Commission will consider rule revisions designed to codify for state purposes these recently–enacted federal changes.

Comparison with federal regulations

Under an agreement with the federal Department of Transportation, Office of Pipeline Safety, the Commission is authorized to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 CFR Parts 192, 193 and 199. As part of the agreement, the Commission agrees to adopt those parts of the federal code that apply to pipeline safety.

Statutory authority

Sections 196.02 (1) and (3), 196.745 and 227.11, Stats.

Staff time required

The Commission estimates that fewer than 200 hours of employee time will be required to develop the rules.

Other resources necessary to develop rule

No additional resources are likely to be needed in order to complete this project.

Entities affected by the rule

Every gas public utility and gas pipeline operator that operates gas transmission or distribution facilities in this state.

¹ This rule would be adopted because it could be expanded to include the great lakes navigable waters in the future.

Workforce Development**Subject**

Ch. DWD 59, grants supporting community child care initiatives.

Policy analysis

Grants supporting community child care initiatives award federal child care funds to local governments and tribes that supply the required matching funds and meet other eligibility criteria for receiving the grants. Grants have been awarded to fund activities such as accommodation of children with disabilities, education of providers, and staff retention strategies. In recent years funding for this program has been cut by 86%. The reduced funding necessitates a change in the procedure for awarding the grants.

The current procedure for awarding grants provides for an initial one-year grant followed by 2 grant cycles of continuing grants. Under current law initial grantees receive up to continuing grants of up to 75% of the amount of their initial grants, and then may also compete, along with any eligible jurisdiction in the state, for the remaining 25% as initial grantees. This 2-step procedure was developed when funding for the program was \$14 to 17 million. With the funding reduced to \$2.4 million, a 2-step procedure is cumbersome and inefficient. The department proposes to focus the dramatically reduced funding on localities and tribes with a proven track record by removing the 75% ceiling on a grantee's continuing grants compared to their initial grant. This allows all funds to be awarded to continuing grantees for the next 2 grant cycles. Current grantees have shown an interest in the program, have the match on hand, and have the demand of grant-funded activities. There are currently 48 grantees representing approximately 86 local jurisdictions.

Statutory authority

Sections 49.137 (4m) and 227.11 (2), Stats.

Entities affected by the rule

Local governments and tribes.

Comparison with federal requirements

There are no comparable federal requirements.

Staff time required

75 hours.

Submittal of rules to legislative council clearinghouse

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

Commerce

On March 23, 2006, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Rules affecting to ch. Comm 5, relating to licenses, certifications and registrations.

Agency Procedure for Promulgation

The Department of Commerce will hold a public hearing on proposed rules on April 27, 2006.

Contact Persons

Jim Quast, Program Manager
608 266–9292
jim.quast@wisconsin.gov

Kickapoo Valley Reserve Management Board

On March 15, 2006, the Kickapoo Valley Reserve Management Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Rules affecting ch. KB 3, relating to user fees.

The KRMB is unaware of any citation or court decision directly relevant to this proposed rule change.

Agency Procedure for Promulgation

A hearing is scheduled for April 25, 2006.

Contact Persons

Marcy West, Executive Director
(608) 625–2960
marcy.west@krm.state.wi.us

Natural Resources

On March 14, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect ch. NR 46, relating to the administration of the Forest Crop Law and Managed Forest Law.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 18, 2006. The Bureau of Forest Management, Forest Tax Unit is primarily responsible for preparing the rule.

Contact Person

Carol Nielsen
(608) 266–8019

Natural Resources

On March 14, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect s. NR 47.93, relating to the forestry research and development grant program.

Agency Procedure for Promulgation

Public hearings are scheduled for April 24 and 26, 2006.

The Bureau of Forestry Services is primarily responsible for preparing the rule.

Contact Person

Terry Mace
(608) 231–9333

Natural Resources

On March 14, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect chs. NR 135 and 340, relating to reclamation of nonmetallic mining sites.

Agency Procedure for Promulgation

Public hearings are scheduled for April 13 and 14, 2006.

The Bureau of Waste Materials and Management is primarily responsible for preparing the rule.

Contact Person

Tom Portle
(608) 267–0877

Natural Resources

On March 14, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect chs. NR 127, 128, 160 and 166, relating to safe drinking water loan program.

Agency Procedure for Promulgation

A public hearing is scheduled for April 12, 2006.

The Bureau of Community Financial Assistance is primarily responsible for preparing the rule.

Contact Person

Jeanne Cargill
(608) 267–7587

Natural Resources

On March 14, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect chs. NR 504, 506, 512, 514, 516 and 520, relating to landfilling of solid waste.

Agency Procedure for Promulgation

A public hearing is scheduled for April 11 and 12, 2006.

Contact Person

Gene Mitchell
South Central Region Waste and Material Supervisor
(608) 275-3466

Natural Resources

On March 14, 2006, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects s. NR 520.04, relating to balances in the Waste Management Program Revenue account.

Agency Procedure for Promulgation

Public hearings will be held April 18 and 19, 2006. The Bureau of Waste Materials and Management is primarily responsible for promulgation of the rule.

Contact Person

Dennis Mack
(608) 267-9386

Regulation and Licensing

On March 31, 2006, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 227.11 (2), 458.03 (1) (b) and 458.085, Stats.

The proposed rule-making order relates to definitions, experience, educational courses, continuing education, conduct and renewal for real estate appraisers.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 10, 2006 at 9:15 a.m. at 1400 East Washington Avenue, Room 121C, Madison, Wisconsin.

Contact Person

Pamela Haack, Paralegal

Office of Legal Counsel

(608) 266-0495

Revenue

On March 21, 2006, the Department of Revenue submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Rules affecting s. Tax 8.63, relating to liquor wholesaler warehouse facilities.

Agency Procedure for Promulgation

A public hearing on the proposed rule will be scheduled. The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

Contact Persons

If you have questions, please contact:

Dale Kleven

Income, Sales and Excise Tax Division

Telephone (608) 266-8253

email dkleven@dor.state.wi.us

Workforce Development

On March 31, 2006, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: Sections 108.14 (2) and 227.11 (2), Stats.

The proposed rules affect ch. DWD 133, relating to unemployment insurance and temporary help employers and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 1, 2006. The organizational unit responsible for the promulgation of the proposed rules is the DWD Unemployment Insurance Division.

Contact Information

Elaine Pridgen

Telephone: (608) 267-9403

Email: elaine.pridgen@dwd.state.wi.us

Rule–making notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

[CR 06–028]

(reprinted from 3/31/06, Wis. Adm. Register)

Rule related to minor remedial drafting changes of department rules.

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on a proposed rule that make minor remedial drafting changes to a number of department rules.

DATCP will hold one public hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until Friday, April 21, 2006 for additional written comments. Comments may be sent to the Office of Legal Counsel, at the address below, by email to karen.schultz@datcp.state.wi.us or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Office of Legal Counsel, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–5023 or emailing karen.schultz@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 or by telephone at (608) 224–5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by April 5, 2006, by writing to Karen Schultz, Office of Legal Counsel, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–5023. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearing Dates and Locations

Thursday, April 13, 2006

1:00 p.m. to 3:00 p.m.

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Room 172

Madison, WI 53718

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

This rule makes technical changes to a number of current rules administered by the Department of Agriculture, Trade and Consumer Protection (“DATCP”), related to a variety of topics. This rule describes the discretion that DATCP may exercise in the enforcement of regulations against small business.

Statutory Authority

Statutory Authority: ss. 93.07 (1), 92.05 (3) (c), 92.14 (8), 93.50 (2) (f), 94.72 (13) (a), 95.197 (2), 95.71 (8), 97.09 (4), 97.20 (4), 97.22 (8), 97.41 (2) and (5), 98.03 (2), 98.18 (2), and 895.59, Stats.

Statutes Interpreted: ss. 92.05, 92.14, 94.72, 95.197, 95.71, 97.20, 97.22, 97.41, 98.03, 98.18, 93.50, and 895.59, Stats.

DATCP has broad authority under 93.07(1) to adopt rules needed to implement laws under its jurisdiction. Under s. 895.59, Stats. (created by 2003 Wisconsin Act 145), DATCP is required to adopt rules describing the discretion that it may exercise in enforcement of its regulations against small businesses. DATCP has specific authority, under the provisions cited above, to adopt rules related to each of the topics addressed by this rule.

Rule Content

Small business enforcement discretion: Under s. 895.59, Stats. (created by 2003 Wisconsin Act 145), state agencies are required to adopt rules describing the discretion they may exercise when enforcing regulations against small businesses. This rule describes the discretion that DATCP may exercise when enforcing regulations against small businesses. DATCP already exercises enforcement discretion, as described in this rule.

Technical changes to current rules.

This rule also makes minor technical changes to a number of rules administered by the DATCP. This rule does all of the following:

Conforms fertilizer tonnage fee (agricultural chemical cleanup surcharge) to current statute. The department is currently charging the (lower) statutory fee, not the obsolete (higher) fee that appears in the current rule (ATCP 40).

- Updates technical standards that are incorporated by reference in current commercial feed rules (ATCP 42). The updates refer to the latest edition (2006) of the official publication of the Association of American Feed Control Officials.

Updates current standards for the professional certification of agricultural engineering practitioners. The revised standards address new agricultural engineering practices, and the planning phases of engineering projects. The revisions also make minor changes to job class criteria for some existing practices, reflecting changes in technology and scale of current projects. DATCP coordinated these revisions with the United States Department of Agriculture (NRCS) and county land conservation departments, including practitioners who serve federal, state and county conservation programs.

Clarifies DATCP's meat holding order and condemnation authority (ATCP 55).

Corrects inconsistent rules related to the legal “shelf life” of smoked fish (one rule says 17 days, the other says 21 days). This rule says 21 days.

- Changes current dairy plant rules (ATCP 80) to make them consistent with current federal standards. This includes minor technical changes related to pasteurization standards, thermometers and temperature readings, as well as updates to

technical standards incorporated by reference (ATCP 80 Appendix). The updates refer to the latest editions of the 3–A Sanitary Standards and Accepted Practices published by the 3–A Sanitary Standards, Inc.

- Updates technical standards that are incorporated by reference in current weights and measures rules (ATCP 92). The updates refer to the latest editions (2006) of current weights and measures handbooks published by the National Institute of Standards and Technology.

Clarifies, per current statutes, that local weights and measures inspectors must be civil service employees (conforms rule to current statute).

Eliminates minor obsolete accounting provisions (in ATCP 105) related to the calculation of cigarette “cost” for purposes of the Unfair Sales Act (“minimum markup law”).

Clarifies the relationship between DATCP’s home improvement code (ATCP 110) and basement waterproofing code (ATCP 111), both of which apply to basement waterproofing services.

Clarifies prohibition against misleading charity claims in coupon book schemes (ATCP 131).

- Repeals current rules related to dairy cattle grades (ATCP 158), because the rules are obsolete and no longer used.

- Corrects typographical errors and cross–references, eliminates obsolete provisions, conforms rules to current statutes, creates clarifying notes, and makes other non–substantive drafting and organizational changes to current rules.

Pursuant to s. 227.21, Stats., DATCP will request permission from the Attorney General and the Revisor of Statutes to incorporate each updated technical standards by reference.

Fiscal Estimate

DATCP already exercises enforcement discretion, as described in this rule, so the effect will be minimal. Fines and forfeitures are paid to the state school fund, not DATCP. Other provisions of this rule will have no fiscal effect on DATCP or local units of government.

Business Impact

DATCP already exercises enforcement discretion, as described in this rule. The current exercise of discretion prevents unnecessary costs to small businesses. The codification of DATCP’s current enforcement policy will not change that policy, or have a major additional impact on business. The other provisions of this rule will have no significant effect on business.

Federal Regulations

Several of the technical changes in this rule will make DATCP rules consistent with current federal standards. Otherwise, there are no existing or proposed federal regulations similar to this rule.

Surrounding State Programs

Surrounding states (Illinois, Indiana, Iowa, Michigan and Minnesota) do not have comparable rules, except that some use comparable technical standards.

Notice of Hearing Chiropractic Examining Board

[CR 06–006]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Chiropractic Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 446.04, Stats.,

the Chiropractic Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Chir 6.02 (6), relating to adequate education prior to application of new therapies and treatment modalities.

Hearing Date, Time and Location

Date: April 27, 2006

Time: 8:15 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. Comments must be received on or before May 11, 2006 to be included in the record of rule–making proceedings.

Statutes interpreted: Section 446.04, Stats.

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

Explanation of agency authority: The Chiropractic Examining Board licenses and regulates the conduct of chiropractors. The board is authorized under ss. 15.08 (5) and (6), 446.02 (1) (b) and 446.02 (2) (b), Stats., to promulgate rules relating to the educational requirements for licensure and the requirements for continuing education of chiropractors and unprofessional conduct.

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 makes changes to reflect the need for chiropractors to receive adequate training, education and experience prior to the introduction, or application, of new therapies and treatment modalities in their chiropractic practice application.

New therapies and treatment modalities, such as cold laser therapy and other potential new high–visibility therapies, are being introduced into the practice of chiropractic treatment on a regular basis. To ensure that these new therapies and treatment modalities being made available by advancements in the field are administered appropriately, and to adequately educate chiropractors on the treatment of their patients, a rule change specifying that the chiropractor should have adequate education and training prior to patient application will be required.

SECTION 1 amends the rules to specify that chiropractors need adequate training, education and experience relating to the use of new therapies and treatment modalities in the chiropractic profession to assure competence prior to application.

Summary of, and comparison with, existing or proposed federal regulation: None.

Comparison with rules in adjacent states:

Illinois:

Illinois’s administrative code has no mention specifically of training requirements; however, the conduct of chiropractors is governed under Section 1285.240 Standards (Illinois Admin. Code). Interestingly, the rules governing the conduct of chiropractors are those of the medical profession

and treat chiropractors as members of the medical profession (referring to them as chiropractic physicians). The rules do require that chiropractors act in ways that will not harm the public, breaches the physician's responsibility to a patient in accordance to medical standards of practice and not use any equipment on patients that have not been authorized for use in an approved research program pursuant to rules of the Illinois Department of Public Health authorizing research programs or as otherwise expressly authorized by law. More may be found at:

<http://www.ildpr.com/WHO/ar/medicalr.asp>

Iowa:

Iowa's administrative code governing conduct has no specific language requiring education prior to the use of a new therapy; however, there are requirements for chiropractors to be competent in their practice. Excerpts from their administrative code are as follows:

45.2 (2) Professional incompetence. Professional incompetence includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other chiropractic physicians in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average chiropractic physician acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a chiropractic physician in this state.

More may be found at:

<http://www2.legis.state.ia.us/Rules/Current/645iac/65545/64545.pfd>

Michigan:

Michigan's administrative code relating to rules governing the practice of chiropractic has no specific rules regulating professional conduct. The rules relating to actions against a Michigan chiropractic license holder are covered under Michigan Statutes: Chapter 333.16221 – 16226. More may be found at:

<http://www.legislature.mi.gov/mileg.asp?page=executesearch>

Minnesota:

Minnesota's statutes governing conduct has no specific language requiring education prior to the use of a new therapy; however, there are requirements for chiropractors to be competent in their practice. Excerpts from their administrative code are as follows:

From Minnesota statutes: 148.10 Licenses Revoked; New Licenses.

(11), unprofessional conduct means any unethical, deceptive or deleterious conduct or practice harmful to the public, any departure from or the failure to conform to the minimal standards of acceptable chiropractic practice, or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a chiropractor:

(1) gross ignorance of, or incompetence in, the practice of chiropractic

More may be found at:

<http://www.mn-chirboard.state.mn.us>

Summary of factual data and analytical methodologies:

No study resulting in the collection of factual data was used in reference to this rule-making effort. The primary methodology for revising the rule is the board's ongoing analysis and determination that a rules change is necessary.

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

The Department of Regulation and Licensing has a small business review advisory committee (SBRAC) consisting of representatives of a variety of small business and geographic locations. This proposed rule was reviewed by the SBRAC and found that the rule would not have a significant economic impact on small business.

This conclusion is supported by an analysis by department staff. Licensed chiropractors are required to follow the Standards of Conduct Rules under ch. Chir 6 of the Wisconsin administrative code. The existing rules prevent licensed chiropractors from performing professional services inconsistent with their training, education or experience. Given the current pace of technological advancement, and the resulting marketing effort targeting practitioners, the existing rules governing professional conduct is amended by the board to clarify education and training requirements of chiropractors prior to application and/or incorporation of new technology-based therapies and treatments into their practice.

The incorporation and use of modern technology has always been and will be a part of patient care; however, the rules governing conduct should keep up with those applications, especially where they relate to existing rules of conduct for the protection of the public.

This proposed rule does not mandate any additional education or training with regards to new technology or treatments, unless chiropractors wish to incorporate those new treatments into their practice.

Anticipated costs incurred by private sector/fiscal estimate: The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate

The proposed rule will have no impact on the department's funds.

Effect on small business

These proposed rules will have no significant economic impact on a substantial number of 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

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.

TEXT OF RULE

SECTION 1. Chir 6.02 (6) is amended to read:

Chir 6.02 (6) Performing professional services inconsistent with training, education or experience. Prior to application to patients of new therapies or treatment modalities, a chiropractor shall obtain adequate and appropriate training and education. Such training and education may be obtained from coursework at an accredited college of chiropractic, or from a board-approved continuing education program or from a program sponsored by an organization listed in s. Chir 5.02 (1) (a).

Notice of Hearing
Chiropractic Examining Board
[CR 06–007]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Chiropractic Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 446.02 (2) (b), Stats., and interpreting s. 446.02 (1) (b) and (2) (a), Stats., the Chiropractic Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal ss. Chir 5.01 (1) (c) and (d) and 5.02 (3); to renumber and amend s. Chir 5.01 (3); and to create ss. Chir 5.01 (3) (b) to (e), 5.02 (1) (i), (4) (a) 8., a. and b., and (7), relating to continuing education credit and approval of continuing education programs.

Hearing Date, Time and Location

Date: **April 27, 2006**
Time: 8:15 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. Comments must be received on or before May 11, 2006 to be included in the record of rule–making proceedings.

Statutes interpreted: Section 446.02 (1) (b), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) and 446.02 (1) (b), Stats.

Explanation of agency authority:

The Chiropractic Examining Board has the authority under s. 446.02, Stats., to establish the requirements of continuing education for license renewal. Presently, those requirements are set forth in Chapter Chir 5. The proposed rule removes references to outdated requirements and provides for approval of non–classroom technology–based educational opportunities. This proposal is intended to allow chiropractors to take advantage of educational opportunities that are or will become available in non–classroom settings by advances in technology while maintaining the value of active participation and the assurances of assessment tools.

Related statute or rule:

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

Plain language analysis:

SECTION 1 repeals one–time ethics and radiology education requirements that were required for the 2003 to 2004 biennium.

SECTION 2 repeals language that requires the student to be physically present in the room in which the program is presented. The removal of this restriction is necessary to facilitate distance learning alternatives.

SECTION 3 establishes a limitation of 12 continuing education hours that may be obtained from technology–based non–classroom education programs. This SECTION requires

that such programs must have a written assessment instrument to assure that the student actively participated and derived a benefit. This SECTION also allows in the case of extreme hardship for accumulation of more than 12 hours of non–classroom continuing education.

SECTION 4 sets forth the requirements of technology–based non–classroom continuing educational programs in addition to the requirements common to all continuing educational programs. These additional requirements include that the student must take a written assessment instrument and demonstrate that they actively participated in the program and demonstrate that they received a measurable benefit from their participation. These programs must also contain a reasonable security measure to assure that the enrolled student is the actual participant.

SECTION 5 repeals language authorizing non–classroom education in cases of extreme hardship because the language was recreated in SECTION 3.

SECTION 6 creates a requirement that the application for approval of technology–based non–classroom continuing education programs must contain information stating how the program will conduct the written assessment and what type of security measures are being used to fulfill the requirements of SECTION 4.

SECTION 7 restricts the approval period of continuing education programs for the biennium in which they are approved. Such a restriction assures that the information conveyed is current and the topic timely.

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

There is no proposed or existing federal regulation authorizing or restricting technology–based non–classroom continuing education programs for chiropractors.

Comparison with rules in adjacent states:

Illinois:

Continuing medical education must use materials such as CD–ROMs, printed educational materials, audiotapes, video cassettes, films, slides and computer assisted instruction that provide a clear, concise statement of the educational objectives and indicate the intended audience. These programs shall also have a method of verifying physicians' participation.

Iowa:

Iowa is currently promulgating a rule change to 645 IAC 44.03 that would allow continuing education credit for completing electronically transmitted programs/activities or independent study programs/activities that have a certificate of completion.

Michigan:

The state of Michigan does not address the setting in which continuing education programs may take place.

Minnesota:

2500.1550 ALTERNATIVES TO TRADITIONAL CLASSROOM PRESENTATION.

A chiropractor may obtain up to six units of the 20–unit annual requirement through alternatives to traditional classroom presentations. The programs must be approved by the board or a board–approved sponsor according to parts 2500.1200 to 2500.2000. The programs approved for continuing education credit under this part must include a written assessment instrument, designed to ensure that the chiropractor actively participated in the presentation of material and derived a measurable benefit from participation. For the purposes of this part, an instrument that provides a minimum of two questions from each unit of instruction, and

of which 75 percent or more are correctly answered, satisfies this requirement.

Summary of factual data and analytical methodologies:

No study resulting in the collection of factual data was used in reference to this rule–making effort. The primary methodology for revising the rule is the board’s ongoing analysis and determination that a rules change is necessary.

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

The Department of Regulation and Licensing has a small business review advisory committee (SBRAC) which consists of representatives of a variety of small business and geographic locations. This proposed rule was reviewed by the SBRAC and the SBRAC found that the rule would not have a significant economic impact on small business.

This conclusion is supported by an analysis by department staff. Licensed chiropractors are required to complete 40 hours of continuing education (CE) each biennium. Continuing education hours have traditionally only been available at locations near urban (higher population density) areas. The economics of hosting and presenting all day or multi–day presentations requires that CE providers attract a large number of attendees. This may cause significant financial burden in terms of travel expenses and lost income due to time away from the practice.

The use of modern technology (an example would be Internet–based CE courses) will offer chiropractors more educational opportunities while reducing travel and time away from office related costs.

This rule does not mandate that any CE provider offer non–traditional or technology–based CE, therefore, there would be no additional mandated expenses to CE providers.

Anticipated costs incurred by private sector/fiscal estimate:

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

Effect on small business:

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

Agency contact

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 must be received on or before May 11, 2006 to be included in the record of rule–making proceedings.

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 May 11, 2006 to be included in the record of rule–making proceedings.

Notice of Hearing

Commerce

(Licenses, Certifications, etc., Ch. Comm 5)

[CR 06–031]

NOTICE IS HEREBY GIVEN that pursuant to chapters 101 and 145, Stats., the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 5, relating to licenses, certifications and registrations.

The public hearing will be held as follows:

Date and Time: Thursday, **April 27, 2006** at 1:00 p.m.

Location: 201 W. Washington Ave, Conference Room 3C, Madison

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until May 5, 2006, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Jim Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at jim.quast@wisconsin.gov.

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

Analysis

Statutes Interpreted: Chapters 101 and 145, Stats., and 2005 Wisconsin Act 25

Statutory Authority: Chapters 101 and 145, Stats., and 2005 Wisconsin Act 25

Related Statute or Rule: None.

Explanation of Agency Authority: Chapter 101, Stats., authorizes the Department of Commerce to adopt reasonable and proper rules relative to the exercise of its powers and authorities, including the issuance and renewal of various credentials to businesses and individuals. Chapter 145, Stats., grants the Department authority to promulgate rules governing plumbers and automatic fire sprinkler system installers. 2005 Wisconsin Act 25 contains revisions to the credential terms for plumbers and automatic fire sprinkler system installers.

Summary of proposed rules: Chapter Comm 5 of the Wisconsin Administrative Code contains the Department’s rules for the issuance and renewal of numerous credentials which businesses and individuals are either mandated or permitted to obtain. These credentials are licenses, certifications and registrations that relate to activities associated with the construction and inspection of buildings and structures or specific components and elements that serve buildings and structures.

The proposed rules consist of revisions in chapter Comm 5 in order to address some administrative issues that have occurred since the last update of chapter Comm 5. The definition of HVAC equipment and an exception for obtaining

the HVAC contractor registration are being revised in order to clarify who must obtain the registration. The credential terms for automatic fire sprinkler system installers and plumbers are changed to 4 years. The respective credential fees and any required continuing education hours are adjusted accordingly. The experience requirements for qualifying for the examination for the commercial electrical inspector certification are removed. The proposed rules also include the creation of continuing education requirements for the renewal of the license as a utility contractor. The proposal also removes dates and date–dependent requirements which are no longer relevant.

Summary of, and comparison with, existing or proposed federal regulations.

The proposed rules address administrative issues unique to the department’s rules. There are no existing or proposed federal regulations that address the activities to be regulated by the proposed rules.

Comparison with rules in adjacent states.

The proposed rules address administrative issues unique to the department’s rules. There are no similar rules in the states of Illinois, Iowa, Michigan and Minnesota.

Summary of factual data and analytical methodologies.

There were no factual data or analytical methodologies used to develop the proposed rules.

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

The proposed rules should have a minimal effect on small business. There were no supporting documents used to determine the effect on small business, and an economic impact report was not prepared.

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

Environmental Assessment

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

Initial Regulatory Flexibility Analysis

Types of small businesses that will be affected by the rules: The rules will affect any business that obtains a credential from the department for an HVAC contractor, automatic fire sprinkler system installer, plumber, commercial electrical inspector, or utility contractor.

Reporting, bookkeeping and other procedures required for compliance with the rules: There are no reporting or bookkeeping procedures required for compliance with the rules.

Types of professional skills necessary for compliance with the rules: There are no types of professional skills necessary for compliance with the rules.

Rules have a significant economic impact on small businesses: No. Rules not submitted to Small Business Regulatory Review Board.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267–0297, or Email at carol.dunn@wisconsin.gov.

Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing chapter Comm 5. The proposed rules contain changes in some of the Division’s license and registration fees in correlation with the changes in the respective license and registration terms. Therefore, over a given period of time, the revenues collected will be unchanged. Also, the proposed rules will not create any additional workload costs.

The proposed rules will not have a significant fiscal effect on the private sector. The higher initial fees will be offset by the longer credential terms.

Notice of Hearing

Kickapoo Reserve Management Board

[CR 06–029]

NOTICE IS HEREBY GIVEN that pursuant to s. 41.41 (7) (k), States., the Kickapoo Reserve Management Board will hold a public hearing at the time and place shown below to consider amending s. KB 1.09 (8) relating to capacity limits at camping areas and s. KB 1.10 regarding fees for hunting and fishing within the Kickapoo Valley Reserve.

Hearing Information

The public hearing will be held in the Kickapoo Valley Reserve Visitor Center meeting room; S.3661 Highway 131, La Farge, Wisconsin on **Tuesday, April 25, 2006** beginning at 6:00 p.m. Copies of the Hearing Notice, complete rule text and other information regarding the Kickapoo Valley Reserve is available via the agency website: <http://kvr.state.wi.us> through the contact information listed below.

Written Comments

Written comments on the proposed rule amendment may be sent to the contact person by April 30, 2006. Written comments will receive the same consideration as oral testimony presented at the hearing.

Analysis Prepared by the Kickapoo Reserve Management Board

Statutory authority: s. 41.31 (7) (j), Stats.

Statutes interpreted: s. 41.41, Stats.

The Kickapoo Reserve Management Board (KRMB) was created in 1994 to manage the 8,569 – acre Kickapoo Valley Reserve (Reserve). Under a joint management agreement with the Ho–Chunk Nation, the KRMB administers the objective set forth in s. 41.41 to: “*preserve and enhance its unique environmental, scenic and cultural features, to provide facilities for the use and enjoyment of visitors to the reserve and to promote the reserve as a destination for vacationing and recreation.*”

Under current rules (s. KB 1.09(8)) the Board limited the number of persons at one campsite to six people. The KRMB in working with the Department of Health and Family Services in the administration of campground rules allow for a variety of campsite sizes that have appropriate capacity

limits based on specific area. The KRMB is seeking to eliminate the “6 person” limit of the current rule to allow for campsite capacity limits to be posted accurately on site. Also, KB 1.10 exempts persons who hunt, fish or trap from paying a fee to the Reserve. The amended rule would eliminate that exemption.

Text of Rule

Section 1. s. KB 1.09(8) is amended to read:

No more than one camping party is permitted at any camping site in the reserve. A camping party that includes persons other than immediate family members may not exceed posted capacity limits except a camping party that receives a permit to camp at a group campsite.

Section 2. s. KB 1.10 (1) is amended to read:

All users of the reserve are required to pay either annual, camping, day use or event fees.

Initial Regulatory Flexibility Analysis

The proposed rule will does not have a significant fiscal impact on governmental entities.

Fiscal Estimate

The proposed rule does not have a significant fiscal impact.

Contact Person

For additional information, copies of the proposed rules or to submit comments in writing contact:

Marcy West, Executive Director

Kickapoo Valley Reserve

S.3661 Highway 131

La Farge, Wisconsin 54639

Phone: 608–625–2960

Fax: 608–625–2962

Email: Kickapoo.reserve@krm.state.wi.us

Notice of Hearing Regulation and Licensing [CR 06–033]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2), 458.03 (1) (b) and 458.085, Stats., and interpreting ss. 458.06, 458.08 and 458.13, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to repeal RL 80.03 (1a), (1b), (7g) (a) and (b), 81.02 (6), 83.01 (4) (a), 84.01 (2), (5), (6) (a) (intro.), 1., 2., 3., (b) (intro.), 1., 2., 3., the Note following RL 84.01 (6) (b) 3., (c) (intro.), 1. and 2. and (13), 85.02 (7) (a) (intro.), 1., 2., (b) (intro.), 1., 2., 3., (c) (intro.), 1., 2., 3., the Note following RL 85.02 (7) (c) 3., (d) (intro.), 1. and 2. and (11); to renumber and amend RL 80.03 (7g) (intro.), 84.01 (6) (intro.), 84.02, 84.03, 84.04, 85.02 (2) and (7) (intro.); to amend RL 80.03 (3), (9) and (13), 81.01, 81.02 (intro.), (3), (7), the Note following RL 81.02 (8), 81.03 (1) (title), (intro.), (c), (2) (intro.), (a), the Note following RL 81.03 (2) (d), the Note following RL 81.04 (1) (a), 81.04 (1) (c) (intro.) and 1., 81.05 (1) (title) and (2) (title), 82.01 (6), 83.01 (3) (intro.), (a) and (b), (4) (b), the Note following RL 83.01 (4) (c), 83.02 (2), 84.01 (1), (7) (b) and (c), (9) (d) and (e), (12) and the Note following RL 84.01 (12), 85.01 (1), (1m), (2), (3) and (5), 85.02 (1), (6), (8) (b) and (c), the Note following RL 85.02 (8) (d), (10), the Note following RL 85.02 (10), 86.01 (1), (2), (4) and (10), 87.01 (1), (2) and (3) and 87.02 (1), (2) (intro.) and (b); to repeal and recreate RL 80.03 (10), 84.01 (7) (e) and 85.02 (8) (e); and to create RL 80.03

(4m), a Note following RL 81.02 (5), 83.01 (3) (f) and (3m), a Note following RL 84.01 (6), 85.02 (2) (a) to (m), a Note following RL 85.02 (7), 86.01 (11) and 87.02 (2) (c), relating to definitions, experience, educational courses, continuing education, conduct and renewal for real estate appraisers.

Hearing Date, Time and Location

Date: **May 10, 2006**

Time: 9:15 A.M.

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

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Council, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708, or by e–mail to pamela.haack@drl.state.wi.us. Written comments must be received by May 22, 2006, to be included in the record of rule–making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes interpreted: Sections 458.06, 458.08 and 458.13, Stats.

Statutory authority: Sections 227.11 (2), 458.03 (1) (b) and 458.085, Stats.

Explanation of agency authority: The Department of Regulation and Licensing is authorized under ss. 458.03 (1) (b) and 458.085, Stats., to promulgate rules establishing the criteria for the approval of educational programs and experience requirements for licensed and certified appraisers.

Related statute or rule: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 USC 3331 et seq.

Plain language analysis:

SECTION 1. In s. RL 80.03 (1a), the department repeals the definition of “ad valorem tax appraisal” and replaces it with the definition of “mass appraisal.” The definition of “mass appraisal,” which is created in SECTION 7, is more commonly used in the profession. Section RL 80.03 (1b), which contains the definition of “affidavit,” is being repealed because the department no longer requires applicants to submit affidavits verifying appraisal experience.

SECTION 2. In s. RL 80.03 (3), the department amends the definition of “appraiser experience,” to include the types of experience that it will accept for purposes of granting appraiser credentials. This change reflects the revisions made by the Appraiser Qualifications Board (“AQB”) of the Appraisal Foundation to the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria.

SECTION 3. Section RL 80.03 (4m) is being created to define “class hour” to mean 60 minutes, of which at least 50 minutes are instruction attended by the student. This definition replaces the definition of “hour of instruction” found in s. RL 80.03 (10), which is being repealed and recreated in SECTION 7.

SECTION 4. Section RL 80.03 (7g) (intro.) is renumbered s. RL 80.03 (7g) and is being amended to define distance education to mean any education process based on the geographical separation of student and instructor. This

change reflects the revisions made by the Appraiser Qualifications Board (“AQB”) of the Appraisal Foundation to the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria.

SECTION 5. Refer to comments under SECTION 4 above.

SECTION 6. Section RL 80.03 (9) is being amended to make a minor correction.

SECTION 7. Refer to comments under SECTION 1 above.

SECTION 8. In s. RL 80.03 (13), the definition of “real estate consulting” is being revised to make a minor change to the rule.

SECTION 9. Section RL 81.01 is being amended to omit the references to sub. (1), because starting January 1, 2008, applicants may be required to satisfy additional educational requirements that are set forth in other subsections of the rules. Refer to SECTIONS 37, 38 and 39.

SECTION 10. Section RL 81.02 (intro.) is being amended to reduce the amount of time that applicants will be required to comply with a request for information related to an application from one year to 120 calendar days. At the expiration of the 120 day period, applicants will be required to file a new application and fee if certification or licensure is sought at a later date.

SECTION 11. A note following s. RL 81.02 (5) is being created to set forth the amount of time that applicants will be allowed to take and pass the state and national examinations and to complete all other requirements for licensure or certification. This change reflects the revisions made by the Appraiser Qualifications Board (“AQB”) of the Appraisal Foundation to the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria.

SECTION 12. Section RL 81.02 (6) is being repealed because the department will no longer require an applicant to submit an affidavit verifying appraisal experience.

SECTION 13. Section RL 81.02 (7) is being amended to make a minor change.

SECTION 14. The Note following s. RL 81.02 (8) is being amended to state that applications are available on the department’s website.

SECTION 15. Section RL 81.03 (1) (intro.) is being amended to clarify that an appraiser who applies for a temporary registration must hold a credential in another state that is not currently limited, suspended or revoked. Section RL 81.03 (1) (c) is being amended to correct the statute citation.

SECTION 16. Refer to SECTION 10 above.

SECTION 17. Refer to SECTION 14 above.

SECTION 18. Refer to SECTION 14 above.

SECTION 19. Section RL 81.04 (1) (c) 1. is being amended to clarify that an appraiser who applies for a reciprocal credential must hold a credential in another state that is not currently limited, suspended or revoked.

SECTION 20. Section RL 81.05 (1) (title) and (2) (title) are being amended to make minor changes.

SECTION 21. Section RL 82.01 (6) is being amended to omit the references to sub. (1), because starting January 1, 2008, applicants may be required to satisfy additional educational requirements that are set forth in other sections of the rules. Refer to SECTIONS 37, 38 and 39.

SECTION 22. Section RL 83.01 (3) is being amended to make minor and technical changes to the rules. See, also, SECTION 2 above.

SECTION 23. Section RL 83.01 (3) (f) is being created to clarify that an applicant may claim no more than 50% of appraisal experience gained without a client. Section RL 83.01 (3m) is being created to state that an applicant who fails to complete the experience hours required for licensure or certification prior to January 1, 2008, may claim only those hours acquired after January 30, 1989. These changes reflect revisions made by the Appraiser Qualifications Board (“AQB”) of the Appraisal Foundation to the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria.

SECTION 24. Section RL 83.01 (4) (a) is being repealed because the department will no longer require an applicant to submit an affidavit verifying appraisal experience. See, also, SECTION 12 above.

SECTION 25. Section RL 83.01 (4) (b) is being amended to make a minor change.

SECTION 26. The Note following s. RL 83.01 (4) (c) is being amended to state that applications are available on the department’s website.

SECTION 27. Section RL 83.02 (2) is being amended because the department no longer requires applicants to submit affidavits verifying appraisal experience. See, also, SECTIONS 12 and 24 above.

SECTION 28. Section RL 84.01 (1) is being amended to reflect that the department no longer accepts courses approved for college credit by the American Council on Education. See, also, SECTION 36.

SECTION 29. Section RL 84.01 (5) is being repealed to reflect that the department no longer accepts courses obtained through challenge examinations.

SECTION 30. Section RL 84.01 (6) (intro.) is being renumbered s. RL 84.01 (6) and is being amended to reflect that the criteria for granting credit for distance education will be based upon the requirements for continuing education courses established by the AQB that are in effect at the time a course is completed.

SECTION 31. Section RL 84.01 (6) (a) (intro.), 1., 2., 3., and the other related provisions are being repealed for the reason stated in SECTION 30 above.

SECTION 32. The Note following s. RL 84.01 (6) is being created to include the website address for the AQB.

SECTION 33. Section RL 84.01 (7) (b) is being amended to include the types of experience that the department will accept for purposes of granting appraiser credentials. See, also, SECTION 2 above. Section RL 84.01 (7) (c) is being amended to clarify that assessor educational programs must be pertinent to appraisal practice in order for the programs to receive approval.

SECTION 34. Section RL 84.01 (7) (e) is being repealed to reflect that the department no longer accepts courses approved for college credit by the American Council on Education. See, also, SECTION 28 above. Section RL 84.01 (7) (e) is being recreated to state that in order for an individual to be approved as an instructor to teach the 15–hour National USPAP Course or its equivalent, the individual must be a certified residential or general appraiser, and be certified by the AQB as an instructor to teach that course. This revision reflects changes made by the Appraiser Qualifications Board (“AQB”) of the Appraisal Foundation to the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria.

SECTION 35. Section RL 84.01 (9) and (12) are being amended to make minor changes to the rules.

SECTION 36. Section RL 84.01 (13) is being repealed to reflect that the department no longer accepts courses

approved for college credit by the American Council on Education. See, also, SECTION 28 above.

SECTION 37. Section RL 84.02 is renumbered s. RL 84.03 and is being amended to state that an applicant who fails to complete the 120 class hours before January 1, 2008, will be required to complete the educational requirements set forth in s. RL 84.03 (4). Section RL 84.03 (4) requires an individual who applies for a certified residential appraiser credential after January 1, 2008, to submit evidence of completion of 200 class hours and an associate degree or equivalent education. This amendment reflects revisions made by the Appraiser Qualifications Board (“AQB”) of the Appraisal Foundation to the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria.

SECTION 38. Section RL 84.03 is renumbered s. RL 84.04 and is being amended to state that an applicant who fails to complete the 180 class hours before January 1, 2008, will be required to complete the educational requirements set forth in s. RL 84.04 (4). Section RL 84.04 (4) requires an individual who applies for a certified general appraiser credential after January 1, 2008, to submit evidence of completion of 300 class hours and a bachelor’s degree or equivalent education. This amendment reflects revisions made by the Appraiser Qualifications Board (“AQB”) of the Appraisal Foundation to the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria.

SECTION 39. Section RL 84.04 is renumbered s. RL 84.02 and is being amended to state that an applicant who fails to complete the 90 class hours before January 1, 2008, will be required to complete the educational requirements set forth in s. RL 84.02 (4). Section RL 84.02 (4) requires an individual who applies for a licensed appraiser credential after January 1, 2008, to submit evidence of completion of 150 class hours of education. This amendment reflects revisions made by the Appraiser Qualifications Board (“AQB”) of the Appraisal Foundation to the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria.

SECTION 40. Section RL 85.01 (1), (1m), (2), (3) and (5) are being amended to make minor changes to the rules.

SECTION 41. Section RL 85.02 (1) is being amended to delete the reference to sub. (11). The amendment reflects that the department no longer accepts courses approved for college credit by the American Council on Education. See, also, SECTIONS 28 and 34 above.

SECTION 42. Section RL 85.02 (2) is renumbered s. RL 85.02 (2) (intro.) and is being amended to reflect that the department will approve only continuing education courses that relate to specific topics or subject areas.

SECTION 43. Section RL 85.02 (2) (a) to (m) are being created to identify the continuing education topics or subject areas that the department will approve. Refer, also, to SECTION 42 above.

SECTION 44. Section RL 85.02 (6) is being amended to make a minor change to the rules.

SECTION 45. Section RL 85.02 (7) (intro.) is renumbered s. RL 85.02 (7) and is being amended to reflect that the criteria for granting credit for distance education will be based upon the requirements for continuing education courses established by the AQB that are in effect at the time a course is completed. See, also, SECTION 30 above.

SECTION 46. Section RL 85.02 (7) (a) (intro.), 1., 2., and the other related provisions are being repealed for the reason stated in SECTION 45 above.

SECTION 47. A Note following s. RL 85.02 (7) is being created to make a minor change to the rules.

SECTION 48. Section RL 85.02 (8) (b) and (c) are being amended to make minor changes to the rules.

SECTION 49. The Note following s. RL 85.02 (8) (d) is being amended to make a minor change to the rules.

SECTION 50. Section RL 85.02 (8) (e) is being repealed to reflect that the department no longer accepts courses approved for college credit by the American Council on Education. See, also, SECTIONS 28 and 36 above. Section RL 85.02 (8) (e) is being recreated to state that in order for an individual to be approved as an instructor to teach the 7–hour National USPAP Update Course or its equivalent, the individual must be a certified residential or general appraiser, and be certified by the AQB as an instructor to teach that course. This revision reflects changes made by the Appraiser Qualifications Board (“AQB”) of the Appraisal Foundation to the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria.

SECTION 51. Section RL 85.02 (10) and the Note following s. RL 85.02 (10) are being amended to make minor changes to the rules.

SECTION 52. Section RL 85.02 (11) is being repealed to reflect that the department no longer accepts courses approved for college credit by the American Council on Education. See, also, SECTIONS 28, 36 and 50 above.

SECTION 53. Section RL 86.01 (1), (2), (4) and (10) are being amended to make minor and technical changes to the rules.

SECTION 54. Section RL 86.01 (11) is being created to state that all certified and licensed appraisers shall comply with state and federal laws that substantially relate to the practice of real estate appraising. In reference to federal laws, this provision would require appraisers to comply with FIRREA as well as federal regulations promulgated by the federal financial institutions regulatory agencies (the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision and the National Credit Union Administration).

SECTION 55. Section RL 87.01 (1) to (3) is being amended to make minor and technical changes to the rules.

SECTION 56. Section RL 87.02 (1), (2) (intro.) and (b) are being amended to make minor and technical changes to the rules.

SECTION 57. Section RL 87.02 (2) (c) is being created to make a minor change to the rules.

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

A. Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”).

(1) In general:

The FIRREA, 12 U.S.C. 3331 et seq. (Title XI) was enacted in 1989. Under FIRREA, insured financial institutions and insured credit unions are required to obtain the services of a state certified or licensed appraiser for appraisals conducted in connection with “federally related transactions.”

Under FIRREA, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council is required to monitor state appraiser certifying and licensing agencies for the purpose of determining whether a state agency’s policies, practices, and procedures are consistent with the federal law. The Appraisal Subcommittee may not recognize appraiser certifications and licenses from states whose appraisal policies, practices, or procedures are found to be inconsistent with FIRREA. Before refusing to recognize a state’s appraiser certifications or licenses, the Appraisal Subcommittee must provide that state’s certifying and

licensing agency with a written notice of its intentions not to recognize the state's certified or licensed appraisers and ample opportunity to provide rebuttal information or to correct the conditions causing the refusal. A decision of the Subcommittee to refuse to recognize a state's appraiser certifications or licenses is subject to judicial review. 12 U.S.C. 3331 et seq.

In 1997, the Appraisal Subcommittee adopted the Policy Statements Regarding State Certification and Licensing of Real Estate Appraisers, which all states comply with. [The Appraisal Subcommittee's Policy Statements are available at <http://www.asc.gov>.]

(2) Appraisal Qualifications:

Under FIRREA, the state criteria for the qualifications of certified real estate appraisers must meet the minimum qualifications criteria for certification established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. The minimum qualifications criteria established by the AQB are set forth in the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria ("Criteria"). The AQB Criteria includes the minimum experience, examination, qualifying education and continuing education requirements that must be satisfied by an individual in order to obtain and maintain a certified appraisal credential. [The AQB Criteria is available on the Internet at <http://www.appraisalfoundation.org>.]

Under FIRREA, the states may establish their own qualifications and requirements for licensed appraiser credentials. The states are not obligated to adopt the minimum experience, examination, education and continuing education requirements recommended by AQB for the licensure of real estate appraisers. However, the Appraisal Subcommittee recommends that all states adopt the AQB Criteria established for licensed appraisers. The Department of Regulation and Licensing has adopted substantially all of the requirements set forth in the AQB Criteria established for the licensure of real estate appraisers.

Comparison with rules in adjacent states:

Under FIRREA (Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989), all states, including Illinois, Iowa, Indiana, Michigan and Minnesota, that certify real estate appraisers for purposes of conducting appraisals in federally related transactions must assure compliance with the AQB (Appraiser Qualifications Board) Criteria for the licensure of real estate appraisers.

Summary of factual data and analytical methodologies:

No study resulting in the collection of factual data was used relating to this rule. The primary methodology for revising the rule is the department's analysis and determination that a rule change is necessary.

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

The proposed rule-making would change rules related to education and experience requirements for real estate appraisers. Included among these rules are the amount of time applicants will be allowed to complete all requirements for licensure, the types of experience the department will accept for granting appraiser credentials, and the types of continuing education the department will approve. There are 1940 licensed appraisers, 1454 certified residential appraisers, and 1375 certified general appraisers who are licensed in Wisconsin and would have to comply with the standards, in

addition to applicants. Of the appraisers who are licensed in Wisconsin, a majority of them probably work in small businesses.

For applicants who do not complete their education before 2008 there will be an increase in education to be paid for. Licensed appraisers will be required to obtain 150 hours instead of the previous requirement of 90 hours of education. This is a 66% increase in appraisal education to be paid for.

Certified residential appraisers will be required to obtain 200 hours instead of the previous requirement of 120 hours of education. This is a 66% increase in appraisal education to be paid for. Also, there will be an additional requirement of an associate degree or 21 semester credit hours in specific content areas. It is not likely that those without the degree will obtain the degree merely for this credential, but it is possible.

Certified general appraisers will be required to obtain 300 hours instead of the previous requirement of 180 hours of education. This is a 66% increase in appraisal education to be paid for. Also, there will be an additional requirement of a bachelor's degree or 30 semester credit hours in specific content areas. It is not likely that those without the degree will obtain the degree merely for this credential, but it is possible.

There will be no additional reporting requirements or bookkeeping requirements. Starting January 1, 2008, new educational requirements will need to be satisfied as stated in the rules. This will be an additional compliance cost for applicants. The additional cost amount is difficult to determine, but should not result in a significant cost impact on small business.

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 change in requirements will result in minimal costs to the department.

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, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935; email pamela.haack@drl.state.wi.us. Comments must be received on or before May 22, 2006 to be included in the record of rule-making proceedings.

Notice of Hearing
Workforce Development
(Unemployment Compensation, Chs. DWD
100–150)
[CR 06–032]

NOTICE IS HEREBY GIVEN that pursuant to Sections 108.14 (2) and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider the creation of rules relating to unemployment insurance and temporary help employers and affecting small businesses.

Hearing Information

Monday, **May 1, 2006** at 1:30 p.m.

GEF 1 Building, H306

201 E. Washington Avenue

Madison

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

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

Analysis Prepared by the Department of Workforce Development

Statutory authority: This rule making amends ch. Trans 152, relating to Wisconsin Interstate Fuel Tax and International Registration Plan programs. The rule making clarifies Department policies regarding application requirements, business location, collections, and overdue billings. The rule making also reflects a statutory change in 1999 Wis. Act 145 that transfers appeals of certain determinations of the Department of Transportation from the Division of Hearings and Appeals to the Tax Appeals Commission..

Statutes interpreted: Sections 108.04 (7), 108.04 (8)

Related statutes: Sections 108.02 (24m) and 108.065, Stats.

Explanation of agency authority. Section 108.14 (2), Stats., provides that the Department may adopt and enforce all rules which it finds necessary or suitable to carry out Chapter 108, Stats., regarding unemployment insurance. Section 108.04 (7), Stats., provides that if an employee terminates work with an employing unit, the employee is ineligible for unemployment insurance except under certain conditions. Section 108.04 (8), Stats., provides that if an employee fails, without good cause, to accept suitable work when offered, the employee is ineligible for unemployment insurance except under certain conditions.

Summary of the proposed rule. For the purpose of unemployment insurance, an employment relationship normally ends when an employee is laid off without a definite return–to–work date, even if recall is anticipated. If a subsequent offer is refused, it is considered a refusal of new work under s. 108.04 (8), Stats. The employment relationship between a temporary help agency and its employees does not

follow the patterns that apply to most other employment relationships. In the temporary help industry, it is common for employees to be assigned to a series of assignments at different locations with different duties, wages, and other conditions. It is also common for these assignments to end with little or no notice to either the employee or the employer. While the parties may fully intend to continue the relationship, the short notice that an assignment has ended may require that a short period of time pass before the employer is able to send the employee to the next assignment. This proposed rule establishes standards for determining whether the employment relationship continues or is terminated for the purpose of unemployment insurance benefit eligibility.

When an assignment from a temporary help employer ends, an employee is eligible for unemployment insurance benefits while the employment relationship continues between assignments, if he or she is otherwise qualified. Under the proposed rule, the employment relationship between a temporary help employer and the employee is considered to be a continuing relationship if all of the following conditions are met:

On or before the end of the first full business day after the end of an assignment, the employee contacts the employer, or the employer contacts the employee, and informs the other that the assignment has ended. The department may waive this deadline if it determines that the employer or employee's failure to communicate was for good cause and the employer and employee have otherwise acted in a manner consistent with the continuation of the employment relationship.

On or before the end of the first full business day after the end of an assignment, the employer informs the employee that the employer will provide a new assignment that will begin within 7 days and either the employer provides a new assignment that does begin within 7 days or, within that same 7–day period, the employer notifies the employee of a delay in the start of the new assignment or notifies the employee of another assignment that will begin within 7 days of the new notice and the delayed or other assignment does begin within those 7 days.

The assignment offered by the employer meets the conditions under which the individual offered to work, including the type of work, rate of pay, days and hours of availability, distance willing to travel to work, and available modes of transportation, as set forth in the individual's written application for employment with the employer submitted prior to the first assignment, or as subsequently amended by mutual agreement. The employer has the burden of proof to show that the assignment meets these requirements.

Chapter 108, Stats., provides that an employee is ineligible for unemployment insurance if the employee voluntarily separated from the employment, unless certain exceptions apply. Under the proposed rule, the employment relationship between a temporary help employer and the employee is considered to be voluntarily separated by the employee when any of the following occur:

The employee fails to notify the employer that an assignment has ended if the employer's policy requires such notification and the employee had notice of this policy prior to the end of the assignment, provided that the employer is not aware that the assignment has ended.

The employee refuses an assignment while the employment relationship continues.

The employee fails to respond to an offer of work by the employer while the employment relationship continues.

The employer is unable to communicate an offer of work to the employee because of the employee's failure to provide the employer with a correct address, telephone number, or

other contact information while the employment relationship continues.

Any other circumstances that would be considered separation by the employee under Chapter 108, Stats.

If an employment relationship does not continue under the terms of the proposed rule, the employment shall be considered separated by the employer unless the employee has voluntarily separated from the employment as provided in the list above or any other provision of Chapter 108, Stats.

When the employment relationship terminates, the employee's application for employment shall expire. If the employee returns to work for the employer, a new application for employment will be required for this chapter to be applicable. If the employee agrees in writing, the original application may be treated as a new application for employment.

Summary of factual data and analytical methodologies. In 1994 the Department responded to concerns expressed by temporary help employers and adopted a policy that considers the employment relationship between a temporary help employer and its employee to continue for a maximum of 14 days after the last day of work while the employer looks for another assignment for the employee, provided the employer guaranteed the employee an assignment to begin within that time period. Refused assignments during that 14–day extension period are considered separations by the employee.

The proposed Chapter DWD 133 codifies the informal policy that is currently in place, with minor adjustments. The proposed rule provides for an extension of the employment relationship while the employer finds a new assignment for the employee, provided that future offers of work are within the confines of the application for employment. The application for employment will be treated as a quasi–employment contract. This provides protection for the employer and the employee as both parties are put on notice as to what type of work will continue the employment relationship. If a subsequent assignment made within the confines of the application for employment is refused during the extension period, the employee is considered to have separated because the employment relationship is considered to still exist.

Comparison with federal law. There is no federal unemployment insurance law that specifically covers treatment of employees of temporary help companies.

Comparison with rules in adjacent states. Minnesota. An individual who within 5 calendar days after completion of a suitable temporary job assignment fails without good cause to affirmatively request an additional job assignment or refuses without good cause an additional suitable job assignment offered shall be considered to have quit employment. This provision applies only if at the beginning of employment with the temporary help company, the applicant signed and was provided a copy of a separate document that informed the applicant of this paragraph and that unemployment benefits may be affected.

Iowa:

An individual who fails without good cause to notify the temporary help company of the completion of an assignment and seek reassignment within 3 working days shall be considered to have voluntary quit employment, unless the individual was not advised in writing of the duty to notify the temporary help company of the completion of an assignment.

Michigan:

An individual is disqualified from receiving benefits if the temporary help company provided the employee with written notice before the employee began performing services stating

that within 7 days after completion of an assignment the employee must notify the temporary help company and failure to provide notice of completion of an assignment constitutes a voluntary quit that will affect the employee's eligibility for unemployment insurance and the employee did in fact not notify the temporary help company of completion of the assignment within 7 days.

Illinois:

There is a rebuttable presumption that an individual is not actively seeking work if the individual was last employed by a temporary help company and the temporary help company alleges that during the week for which the individual claimed benefits, he or she did not contact the temporary help company for an assignment. The presumption is rebutted if the individual shows that he or she did contact the temporary help company or that he or she had good cause for failure to contact the temporary help company for an assignment.

Effect on small business. The proposed rule will affect temporary help employers, some of which are small businesses. Using the best data available, the Department estimates that the number of temporary help employers in 2004 was 721. Of these, 203 had a monthly average of 1–25 employees but may involve a larger number of individuals given the temporary nature of employment provided.

There are no reporting, bookkeeping, or other procedures required for compliance with the proposed rule and no professional skills are required. The proposed rule was developed in consultation with the temporary help industry and reflects current best practices in the industry.

The Department's Small Business Regulatory Coordinator:

Jennifer Jirschele

(608) 266–1023

jennifer.jirschele@dwd.state.wi.us.

Analysis and supporting documents used to determine effect on small business. There is no data available that allows the Department to accurately determine the number of temporary help employers that meet the definition of small business in s. 227.114 (1), Stats. The data that is available on a business entity's number of employees is from the Quarterly Census of Employment and Wages (QCEW) program, which is based on UI reports and Multiple Worksites Reports (MWR). When available, MWRs provide a disaggregation of data. The data does not identify if a business is independently owned and operated, if employees are full–time or part–time, or if a business is dominant in its field.

The Department requested information on the number of temporary help employers that have gross annual sales of less than \$5 million from the Department of Revenue, but they were unable to provide it.

Fiscal Effect

The rule reflects current best practices in the temporary help industry and is not expected to qualify or disqualify more claimants of employers following these practices.

Contact Information

The proposed rules are available at the web site <http://adminrules.wisconsin.gov> by typing “unemployment insurance and temporary help employers” in the search engine. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting:

Elaine Pridgen

Office of Legal Counsel

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

2006, will be given the same consideration as testimony presented at the hearing.

Written comments. Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than May 3,

Submittal of proposed rules to the legislature

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

Commerce**(CR 05–081)**

Ch. Comm 48, relating to petroleum products.

Labor and Industry Review Commission**(CR 05–092)**

Chs. LIRC 1 to 4, relating to the rules of practice and procedure before the commission.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board**(CR 05–119)**

Ch. MPSW 14, relating to continuing education credits for professional counselors.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board**(CR 05–120)**

Ch. MPSW 8, relating to continuing education credits for social workers.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board**(CR 05–122)**

Ch. MPSW 19, relating to continuing education credits for marriage and family therapists.

Natural Resources**(CR 03–118)**

Chs. NR 405 and 408, relating to incorporation of federal changes to the air permitting program.

Natural Resources**(CR 04–106)**

Chs. NR 406, 407 and 410, relating to linkage of the state air permitting programs with federal changes to the air permitting program and affecting small business.

Natural Resources**(CR 05–084)**

Ch. NR 118, relating to management zone designations in the Lower St. Croix National Scenic Riverway.

Natural Resources**(CR 05–100)**

Ch. NR 192, relating to lake monitoring contracts and the citizen lake monitoring network.

Natural Resources**(CR 05–101)**

Ch. NR 20, relating to hook and line walleye, sauger and hybrids fishing in Sherman Lake, Vilas Co. and Bass (Patterson), Washburn Co.

Natural Resources**(CR 05–102)**

Ch. NR 10, relating to small game and expanded turkey hunting in state parks.

Natural Resources**(CR 05–115)**

Chs. NR 25 and 26, relating to allocation of lake trout and commercial fishing for lake trout in Lake Superior.

Nursing Home Administrator Examining Board**(CR 06–010)**

Chs. NHA 1 and 3, relating to continuing education.

Revenue**(CR 06–001)**

Chs. Tax 1 and 2, relating to electronic funds transfer, information returns and wage statements.

Rule orders filed with the revisor of statutes bureau

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

Natural Resources (CR 05–087)

An order affecting chs. NR 46 and 47, relating to the administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program.
Effective 6–1–06.

Natural Resources (CR 05–106)

An order affecting ch. NR 47, relating to master logging certification scholarships.
Effective 6–1–06.

Public Service Commission (CR 05–079)

An order affecting ch. PSC 111, relating to rules concerning the establishment of capital cost ratemaking principles for certain rate base electric generating facilities.
Effective 6–1–06.

Public notices

Natural Resources

(Notice of Availability of a Legislative Report Relating to Wisconsin's Air State Implementation Plan)

All interested persons are advised that the Department of Natural Resources (DNR) intends to submit proposed rules as contained in Natural Resources Board Order AM-32-04b (Clearinghouse Rule No. 06-019) to the United States Environmental Protection Agency (USEPA) for incorporation into Wisconsin's air state implementation plan to meet requirements contained in the Federal Clean Air Act 42 USC 7401, et seq. DNR has submitted these proposed rules amending certain sections in chs. NR 406 and 410, Wis Administrative Code, to improve the interface between state air permits and federal New Source Review (NSR) provisions as a report to the legislative standing committees for environmental matters as required under s. 285.14(2), Stats. Information on AM-32-04b can be viewed on the following website: <https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmold=705>

If you are unable to make copies of this information from the website and would like copies of the information supplied to the Wisconsin legislative committees, please call Ralph Patterson, DNR, at 608-267-7546 or send a request via email to Ralph.Patterson@dnr.state.wi.us.

Natural Resources

(Notice of Availability of a Legislative Report Relating to Wisconsin's Air State Implementation Plan)

All interested persons are advised that the Department of Natural Resources (DNR) intends to submit proposed rules as contained in Natural Resources Board Order AM-06-04 (Clearinghouse Rule No. 03-118) to the United States Environmental Protection Agency (USEPA) for incorporation into Wisconsin's air state implementation plan to meet requirements contained in the Federal Clean Air Act 42 USC 7401, et seq. DNR has submitted these proposed rules that change the DNR's Bureau of Air Management construction permit program in accord with USEPA's December 2002 changes to its new source review program as a report to the legislative standing committees for environmental matters as required under s. 285.14(2), Stats. Information on AM-06-04 can be viewed on the following website: <https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmId=183>

If you are unable to make copies of this information from the website and would like copies of the information supplied to the Wisconsin legislative committees, please call Ralph Patterson, DNR, at 608-267-7546 or send a request via email to Ralph.Patterson@dnr.state.wi.us.

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