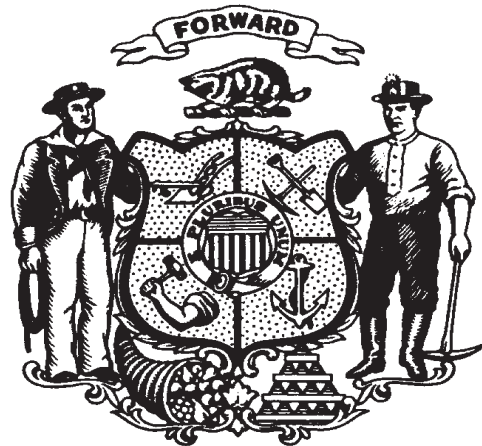


# Wisconsin Administrative Register

No. 608



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## Emergency rules now in effect

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

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

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

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

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

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

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### Administration

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

#### Exemption from Finding of Emergency

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

#### Plain language analysis

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

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

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

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

**Publication Date: July 1, 2006**

**Effective Date: July 1, 2006**

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

**Hearing Date: August 11, 2006**

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

1. Rules adopted revising **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 Date:** March 31, 2006  
**Extension Through:** September 28, 2006

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

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

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

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

**Publication Date:** July 12, 2006  
**Effective Date:** July 12, 2006  
**Expiration Date:** December 9, 2006  
**Hearing Date:** August 15, 2006

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### 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  
**Hearing Date:** May 15, 2006  
**Extension Through:** September 29, 2006

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### Commerce

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

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

### Exemption from Finding of Emergency

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

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

the total funding requested in the applications exceeds the available revenue.

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

### Corrections

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

#### Finding of Emergency

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

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

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

### 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 Date:** May 18, 2005

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

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

### Emergency Management

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

#### Finding of Emergency

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

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

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

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



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

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

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

### Finding of Emergency

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

The facts constituting the emergency are as follows:

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

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

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

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

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

### Exemption from Finding of Emergency

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

Plain language analysis:

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

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

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

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

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

1. 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 Date:** January 13, 2006  
**Extension Through:** September 10, 2006

2. 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 Date:** April 24 & 26, 2006

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

#### **Finding of Emergency**

It is important to have restrictions on out–of–state firewood entering department lands in place this camping season due to recent developments in efforts to eradicate and quarantine emerald ash borer in the areas where it is currently established. In Michigan, Ohio, Indiana and Ontario, eradication programs are being dramatically scaled back or abandoned entirely for this summer. A recent audit of quarantine efforts in Michigan where emerald ash borer is most abundant and widespread is critical and faults their program for lax enforcement and poor education of the public to the dangers of moving firewood. Given this situation, a need for an external quarantine to protect Wisconsin forest resources, industry, and community trees becomes obvious. The Wisconsin Department of Agriculture, Trade and Consumer Protection has proposed an external quarantine on host material of emerald ash borer and three other invasive pests and diseases and our firewood regulation would help support this effort, provide an opportunity for education of the public and reduce one of the reasons people move firewood: for use while camping.

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

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## **Natural Resources (2)** **(Environmental Protection – Water Regulation, Chs. NR 300—)**

1. 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 Date:** May 19, 2004

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

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

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

### Finding of Emergency

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

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision–making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2006 construction season, with specific standards for shore erosion control structures on rivers and streams.

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

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## Regulation and Licensing

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

### Plain language analysis

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

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

### Exemption from finding of emergency

Section 9140 (1q) of 2005 Wisconsin Act 25 states in part: “Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence

that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.”

**Publication Date:** April 15, 2006  
**Effective Date:** April 15, 2006  
**Expiration Date:** September 12, 2006  
**Hearing Date:** June 27, 2006

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## Transportation

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

### Exemption from finding of emergency

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

### Analysis Prepared by the Department of Transportation

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

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

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## 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.

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

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## Scope statements

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### Dentistry Examining Board

#### Subject

The board intends to clarify the requirements for applications by dentists licensed in other states, territories, and countries that hold degrees from non–accredited dental schools. Currently, the rules allow a graduate of a foreign trained dentistry program that is not accredited to be evaluated for education equivalency through an evaluation program approved by the board. However, the board has determined there is no such program available to adequately evaluate the didactic and clinical training of foreign trained dentists. In order to ensure educational equivalency exists between the graduates of accredited and non–accredited dental schools, the board intends to require graduates of a foreign trained dentistry program that is not accredited seeking licensure in Wisconsin to attend an accredited dental school in the United States or Canada for a minimum of 2 years and graduate with a doctor of dental surgery or a doctor of dental medicine degree, or attend an accredited dental school in a country other than the United States or Canada and graduate with a degree from that school.

#### Policy Analysis

*Objective of the rule.* To ensure that all applicants meet the educational standards required of graduates of DDS or DMD accredited educational programs.

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

Until July 2, 2003, the board relied on the Marquette University School of Dentistry to provide a program to meet the need for the evaluation of didactic and clinical training of graduates of dental schools that are not accredited. At the request of the Marquette University School of Dentistry the evaluation program was discontinued and due to the unavailability of a board approved evaluation program, the board ceased licensing of foreign trained dentists. The board subsequently began a search for other acceptable programs. Several denials were challenged at the administrative hearing level and are at this time pending before the board. At the March 1, 2006 board meeting, the board voted to require that foreign trained graduates seeking licensure in Wisconsin attend an accredited dental school in the United States or Canada for a minimum of 2 years and graduate with a doctor of dental surgery or a doctor of dental medicine degree, or attend an accredited dental school in a country other than the United States or Canada and graduate with a degree from that school.

#### Comparison with federal regulations

There is no existing or proposed federal regulation.

#### Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 447.04 (1) (b), Stats.

#### Entities affected by the rule

Applicants for dental licenses who have graduated from non–accredited dental schools.

#### Staff time required

300 hours.

### Financial Institutions – Banking

#### Subject

Section DFI—Bkg 80.68 relating to nonjudicial enforcement and surrender of collateral.

#### Policy Analysis

The objective of the rule is to amend s. DFI—Bkg 80.86. The purpose of this rule is to bring s. DFI—Bkg 80.68 into conformity with newly created s. 425.206 (1) (d), Stats. Under the current s. DFI—Bkg 80.68, where a merchant request or demands the return of collateral, after providing the customer with notice of default and opportunity to cure as required by s. 425.105, Stats., a release of the collateral by the customer is not a surrender under ss. 425.204 (3) and 425.206 (1), Stats., if the merchant fails to provide a notice to the customer which clearly informs the customer of the right to a hearing on the issue of default before any repossession. 2005 Wisconsin Act 255, s. 8 created s. 425.206 (1) (d), Stats. This statute section provides that notwithstanding any other provision of law, no merchant may take possession of collateral or goods subject to a consumer lease in this state except when, for motor vehicle collateral or goods subject to a motor vehicle consumer lease, the customer has not made a demand as specified in s. 425.205 (1g) (a) 3., Stats., and, no sooner than 15 days after the merchant gives the notice specified in s. 425.205 (1g) (a), Stats., the merchant has taken possession of the collateral or goods in accordance with s. 425.206 (2), Stats. The rule amends s. DFI—Bkg 80.68 to incorporate the provisions of s. 425.206 (1) (d), Stats. The rule provides that where a merchant requests or demands the return of collateral, after providing the customer with notice of default and opportunity to cure as required by s. 425.105, Stats., a release of the collateral by the customer is not a surrender under ss. 425.204 (3) and 425.206 (1), Stats., if the merchant fails to provide a notice to the customer which clearly informs the customer of the right to a hearing on the issue of default before any repossession unless the creditor has perfected its right to repossession under s. 425.206 (1) (d), Stats.

#### Statutory authority

Sections 426.104 (1) (e) and 227.11 (2), Stats.

#### Staff time required

100 hours.

#### Entities affected by the rule

Creditors taking motor vehicles as collateral and lessors of motor vehicles.

### Financial Institutions – Banking

#### Subject

Rules relating to any person licensed under s. 138.09, Stats., and operating as a pawnbroker.



**Policy Analysis**

The objective of the rule is to repeal and recreate ch. DFI—Bkg 77. Currently ch. DFI—Bkg 77 relates to the “Consumer Credit Review Board.” However, this chapter is no longer necessary and should be repealed because this board was legislatively abolished. Currently pawnbrokers are subject to regulation under s. 138.10, Stats. However, 2005 Wisconsin Act 158 provides that, effective October 1, 2006, if a pawnbroker registers as a licensed lender under s. 138.09, Stats., the pawnbroker is exempt from the requirements of s. 138.10, Stats. The purpose of this rule is to set forth, in the recreated ch. DFI—Bkg 77, matters pertaining to the regulation of pawnbrokers, including definitions, hours and days of operation, holding periods, law enforcement requests, sales notices, effect of nonredemption, extensions and prohibited practices.

**Statutory authority**

Sections 220.02 (2) and (3), and 227.11 (2), Stats.

**Staff time required**

250 hours.

**Entities affected by the rule**

Pawnbrokers.

**Comparison with federal regulations**

None.

**Health and Family Services****Subject**

The Department of Health and Family Services proposes to revise ch. HFS 37, relating to information to be provided to foster parents.

**Policy Analysis**

Sections 48.371 and 895.485, Stats., require the Department to provide specified information to a variety of persons responsible for providing care and maintenance to children placed in out-of-home care. While s. 895.485 speaks specifically to children placed in foster homes, treatment foster homes, and family-operated group homes, s. 48.371 is broader and includes all group homes and residential care centers for children and youth. In addition, s. 48.371 was revised by 2005 Wisconsin Act 232 to include relatives with whom the child is placed by the child welfare agency or court.

During the Child and Family Services Review (CFSR) of the Wisconsin child welfare system conducted by the federal Administration for Children and Families (ACF), a federal agency funding state, territory, local, and tribal organizations to provide family assistance (welfare), child support, child care, Head Start, child welfare, and other programs relating to children and families, federal reviewers identified the need to provide greater assessment of a child’s needs, to provide that information to caregivers providing services to children, and to establish plans for caregivers to follow in case of a crisis or emergency with a foster child.

In response to the findings, the Department developed a Program Enhancement Plan (PEP), which was approved by ACF. In the Program Enhancement Plan, the Department agreed to enhance the information to be provided to physical custodians, particularly the information contained in Appendix B to ch. HFS 37. There are no federal regulations regarding the specific information to be provided to physical custodians at the time a child is placed in their care.

Under the proposed revisions to ch. HFS 37, the Department intends to revise Appendix B to the chapter to provide a minimal increase in the type of information to be gathered, to create a more logical organization of the information in the appendix, to establish a specific section of the appendix relating to an emergency response plan (which essentially focuses information already required in the appendix), and to include tribal contact information. In addition, ch. HFS 37 will also be revised slightly to reflect current statutory requirements.

Members of the general public that will be affected by the rule are children and families.

**Statutory authority**

The Department’s authority to promulgate this rule is found at ss. 895.485 (4) (a) and s. 227.11 (2), Stats. In addition, the general authority under s. 48.48 (16), Stats., applies.

**Staff time required**

It is anticipated that approximately 40 to 50 hours of staff time will be required for the revision, review, and editing of the amended rule. In addition, members of the PEP Out-of-Home Care Committee that was established as part of the Program Enhancement Plan (PEP) will participate in the revision process. Entities that will be affected will also be active participants in the revision process.

**Entities affected by the rule**

The rule will have a direct impact on the Department, including the Bureau of Milwaukee Child Welfare (BMCW), county human and social services agencies, and licensed child welfare agencies.

**Comparison with federal regulations**

There is not a specific requirement in federal law that mandates the provision of this information, although we interpret s. 471(a)(24) of Title IV–E of the Social Security Act to require that a provider of out-of-home care for children subject to those provisions be provided such information about a child placed in care. Authority for the Child and Family Services Review is located at 45 CFR Part 1355.

**Health and Family Services****Subject**

The Department of Health and Family Services proposes to modify ch. HFS 45, relating to family child care centers; ch. HFS 46 relating to group child care centers; and ch. HFS 55, relating to day camps for children and day care programs established by school boards.

**Policy Analysis**

The Department is required under s. 48.67, Stats., to establish, by rule, minimum requirements and standards for the operation of day care centers. These requirements and standards are codified under chs. HFS 45, 46, and 55. 2005 Wisconsin Act 165 revised s. 48.67, Stats., to require licensees who are individuals, employees, and volunteers who provide care to children under 5 years old to receive training under s. 253.14 (4), Stats., relating to shaken baby syndrome and impacted babies before the individual is issued a license or before employment or volunteer work begins. The Department intends to modify these rules to conform to the new requirements under s. 48.67.

In addition, the Department intends to modify chs. 45, 46, and 55 to conform with s. 948.53, Stats., (created by 2005 Wisconsin Act 184) which prohibits a person from leaving a

child being transported in a vehicle that is owned or leased by a child care provider or used to transport children to and from a child care provider. The Department specifically intends to incorporate requirements for procedures to ensure that children are tracked during transport and that parents are notified if a child does not arrive at a day care center as scheduled. Further changes intended for chs. HFS 45, 46, and 55 are to ensure that the rules conform with the requirements under s. 347.48 (4) (as), Stats., for restraining children under 8 years old in motor vehicles used to transport children in care. The Department also intends to generally update and clarify chs. HFS 45, 46, and 55.

**Statutory authority**

Sections 48.67 and 227.11 (2) Stats.

**Staff time required**

The Department estimates that it will take staff approximately 60 hours to develop the proposed rules. In developing these rules, the Department will consult with the Child Abuse and Neglect Prevention Board; the Department

of Commerce; the Child Care Forum, which is comprised of members from the Department of Public Instruction; the Child Care Section in the Department of Workforce Development; private agencies and organizations affiliated with child care; and licensed child care providers.

**Entities affected by the rule**

The proposed rule revisions may affect parents and children who receive care in day care centers, including day care programs operated or contracted by school boards, day camp providers, nursery schools, preschools, head start, camp, and day nurseries; licensed child care providers, applicants for licensure, and their employees or volunteers; school boards; contractors with school boards to operate day care programs; and non–profit organizations that provide the training relating to shaken baby syndrome.

**Comparison with federal regulations**

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

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## Submittal of rules to legislative council clearinghouse

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

### **Public Instruction**

On July 14, 2006, the Wisconsin Department of Public Instruction submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed rule amends ch. PI 21, relating to driver's education requirements and aid.

### **Agency Procedure for Promulgation**

The proposed rule brings ch. PI 21 into conformity with ss. 115.28 (11) and 121.41 (1), Stats. Therefore, pursuant to s. 227.16 (2) (b), Stats., the department will not hold public hearings regarding these rules.

### **Contact Person**

The Division for Learning Support: Equity and Advocacy is primarily responsible for promulgation of this rule. If you have questions regarding this rule, you may contact Randall Thiel, Education Consultant, 608/266–9677.

### **Public Instruction**

On July 14, 2006, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed rule amends ch. PI 40, relating to the youth options program.

### **Agency Procedure for Promulgation**

Public hearings will be scheduled.

### **Contact Person**

The Division for Academic Excellence is primarily responsible for promulgation of this rule. If you have questions regarding this rule, you may contact Beth Lewis, Consultant, 608/267–1062.

### **Public Instruction**

On July 14, 2006, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed rule repeals ch. PI 15, relating to qualifications and selection procedures for CESA administrators.

### **Agency Procedure for Promulgation**

The proposed rule repeal brings an existing rule into conformity with a statute that has been changed to no longer require the department's involvement in CESA administrator appointment activities. Therefore, pursuant to s. 227.16 (2) (b), Stats., the department will not hold public hearings regarding these rules.

### **Contact Person**

The Division of Finance and Management is primarily responsible for promulgation of this rule. If you have questions regarding this rule, you may contact Lori Slauson, Administrative Rules and Federal Grants Coordinator, 608/267–9127.

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## Rule–making notices

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### Notice of Hearing Controlled Substances Board

[CR 06–058]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Controlled Substances Board in ss. 961.11 (1) and 961.14, Stats., Stats., and interpreting ss. 961.11 (1) and 961.14, Stats., the Controlled Substances Board will hold a public hearing at the time and place indicated below to consider an order to create ss. CSB 2.31 and 2.32, relating to the scheduling of two schedule I controlled substances, N–benzylpiperazine (BZP) and 2,5 dimethoxy–4–(n)–propylthiophenethylamine (2C–T–7) under chapter 961, Stats., of the Uniform Controlled Substances Act.

Hearing Date, Time and Location

**Date:** September 7, 2006

**Time:** 9:30 a.m.

**Location:** 1400 East Washington Avenue  
(Enter at 55 North Dickinson Street)

Room 121A

Madison, Wisconsin

Appearances at the Hearing:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by September 8, 2006, to be included in the record of rule–making proceedings.

#### Analysis prepared by the Department of Regulation and Licensing.

Statutes interpreted: Sections 961.11 (1) and 961.14, Stats.

Statutory authority: Sections 961.11 (1) and 961.14, Stats.

Explanation of agency authority: The Controlled Substances Board is authorized by s. 961.11 (1) Stats., to add substances to or delete or reschedule substances listed under schedule I, in s. 961.14 Stats., pursuant to the rulemaking procedures of ch. 227, Stats.

Related statute or rule:

21 CFR Sec. 1308.11 (d) (6) and (f) (2)

Plain language analysis:

By final rule of the Drug Enforcement Administration (DEA), adopted effective March 10, 2004, 2,5 dimethoxy–4–(n)–propylthiophenethylamine(2C–T–7) and N–benzylpiperazine (BZP) were classified as schedule I controlled substances under the federal Controlled Substances Act (CSA). Neither 2C–T–7 or BZP have been so scheduled under the Wisconsin Controlled Substances Act in Chapter 961, Stats. The objective of this proposed rule–making is to bring the treatment of this drug into conformity with that at the federal level.

Drugs that are classified as “controlled substances” under federal and state laws are subject to higher civil and criminal

penalties for their illicit possession, distribution and use. Health care providers are also subject to greater record keeping requirements respecting their obtaining, prescribing and dispensing of such drugs. This is due to the fact that certain drugs have a greater likelihood of abuse, addiction and adverse consequences to patient health if utilized inappropriately, than do other drugs. In its Year 2003 Annual Report, The National Forensic Laboratory Information System (NFLIS) indicates BZP, a substance with effects similar to amphetamines, in 0.18% of total club drugs reported. The DEA has encountered BZP in Wisconsin and reports that it is often sold as MDMA (“Ecstasy”) when combined with TFMPP. Abuse of 2C–T–7, which produces hallucinogenic–like effects, increased in 2000 and has also been encountered at “raves” in Wisconsin. Three deaths have been associated with its consumption. The DEA administers the Controlled Substances Act. This forms the basis for the DEA action.

SECTION 1 schedules 2,5 dimethoxy–4–(n)–propylthiophenethylamine (2C–T–7) into schedule I of the Uniform Controlled Substances Act.

SECTION 2 schedules N– benzylpiperazine (BZP) into schedule I of the Uniform Controlled Substances Act.

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

21 CFR Sec. 1308.11 (d) (6)– 2,5 dimethoxy–4–(n)–propylthiophenethylamine (2C–T–7).

21 CFR Sec. 1308.11 (f) (2)– N– benzylpiperazine (BZP).

Comparison with rules in adjacent states:

Illinois:

Not scheduled.

Michigan:

Not scheduled.

Minnesota:

Emergency scheduling– schedule I of that state’s controlled substances act. [Both substances]

Iowa:

Not scheduled.

Summary of factual data and analytical methodologies:

The Wisconsin Controlled Substances board reviewed the federal rule summary and supplemental information for the scheduling of these two substances, and agrees with the conclusions therein regarding the potential for abuse, no current accepted medical use and lack of medical safety for these two substances. The substances are the specific object of abuse by young adults in the “raves” context, specifically, in Wisconsin.

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

Since there is no anticipated impact on small business from this rule, no additional compliance, bookkeeping, reporting, recordkeeping or professional skills are required.

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.



Entities affected by the rule:

Enforcement agencies; the Wisconsin Department of Justice, local District Attorneys.

### Fiscal Estimate

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

Anticipated costs incurred by private sector:

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

Effect on small business:

These proposed rules will be reviewed by the department's small business review advisory committee to determine whether they will have any 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 person:

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

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before September 7, 2006 to be included in the record of rule–making proceedings.

### TEXT OF RULE

SECTION 1. CSB 2.31 is created to read:

**CSB 2.31 Addition of 2,5 dimethoxy–4–(n)–propylthiophenethylamine (2C–T–7) to schedule I.** (1) Section 961.14 (4) (wh) is created to read:

Section 961.14 (4) (wh) 2,5 dimethoxy–4–(n)–propylthiophenethylamine, commonly known as “2C–T–7”;

SECTION 2. CSB 2.32 is created to read:

**CSB 2.32 Addition of N– benzylpiperazine (BZP) to schedule I.** (1) Section 961.14 (7) (q) is created to read:

Section 961.14 (7) (q) N– benzylpiperazine, commonly known as “BZP.”

## Notice of Hearing Controlled Substances Board [CR 06–059]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Controlled Substances Board in ss. 961.11 (1) and 961.14, Stats., Stats., and interpreting ss. 961.11 (1) and 961.14, Stats., the Controlled Substances Board will hold a public hearing at the time and place indicated below to consider an order to create ss. CSB 2.33 and 2.34, relating to the scheduling of two schedule I controlled substances, alpha–methyltryptamine (AMT) and 5–methoxy–N, N–diisopropyltryptamine (5–MeO–DIPT) under chapter 961, Stats., of the Uniform Controlled Substances Act.

### Hearing Date, Time and Location

**Date:** September 7, 2006

**Time:** 9:40 a.m.

**Location:** 1400 East Washington Avenue  
(Enter at 55 North Dickinson Street)

Room 121A

Madison, Wisconsin

### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by September 8, 2006, to be included in the record of rule–making proceedings.

### Analysis prepared by the Department of Regulation and Licensing

Statutes interpreted: Sections 961.11 (1) and 961.14, Stats.

Statutory authority: Sections 961.11 (1) and 961.14, Stats.

Explanation of agency authority:

The Controlled Substances Board is authorized by s. 961.11 (1) Stats., to add substances to or delete or reschedule substances listed under schedule I, in s. 961.14 Stats., pursuant to the rulemaking procedures of ch. 227, Stats.

Related statute or rule:

21 CFR Sec. 1308.11 (d) (15) and (19)

Plain language analysis:

By final rule of the Drug Enforcement Administration (DEA), adopted effective October 3, 2004, alpha–methyltryptamine (AMT) and 5–methoxy–N, N–diisopropyltryptamine (5–MeO–DIPT) were classified as schedule I controlled substances under the federal Controlled Substances Act (CSA). Neither AMT nor 5–MeO–DIPT have been so scheduled under the Wisconsin Controlled Substances Act in Chapter 961, Wis. Stats. The objective of this proposed rule–making order is to bring the treatment of these drugs into conformity with that at the federal level.

Drugs that are classified as “controlled substances” under federal and state laws are subject to higher civil and criminal penalties for their illicit possession, distribution and use. Health care providers are also subject to greater record keeping requirements respecting their obtaining, prescribing and dispensing of such drugs. This is due to the fact that certain drugs have a greater likelihood of abuse, addiction and adverse consequences to patient health if utilized inappropriately, than do other drugs. The National Forensic Laboratory Information System (NFLIS) has registered 10 cases of AMT and 12 cases of 5–MeO–DIPT. The Drug Enforcement Agency (DEA) asserts that AMT shares pharmacological effects of amphetamine and LSD and that 5–MeO–DIPT copies the effects of MDMA, both Schedule I hallucinogens. Three deaths have been associated with its consumption. The DEA administers the Controlled Substances Act. This forms the basis for the DEA action. The policy alternative to not scheduling the indicated substances concurrent with federal scheduling will be that state prosecutions will not be available. Generally, state prosecutions at the local level, rather than federal prosecutions, are more likely to occur where smaller amounts of a scheduled substance are involved.

SECTION 1 schedules alpha–methyltryptamine (AMT) into schedule I of the Uniform Controlled Substances Act.



SECTION 2 schedules 5–methoxy–N, N–diisopropyltryptamine (5–MeO–DIPT) into schedule I of the Uniform Controlled Substances Act.

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

21 CFR § 13.08.11 has been amended as follows:

(d)\*\*\*

(15) Alpha–methyltryptamine (other name: AMT)

\*\*\*\*\*

(19) 5–methoxy–N,N–diisopropyltryptamine (other name: 5–MeO–DIPT)

Comparison with rules in adjacent states:

Illinois: AMT is included in schedule I of that state’s controlled substances act.

Michigan: Not scheduled.

Minnesota: Not scheduled.

Iowa: Not scheduled.

Summary of factual data and analytical methodologies:

The Wisconsin Controlled Substances board reviewed the federal rule summary and its basis for the scheduling of these two substances. The National Forensic Laboratory Information System (NFLIS) has registered 10 cases of AMT and 12 cases of 5–MeO–DIPT. The Drug Enforcement Agency (DEA) asserts that AMT shares pharmacological effects of amphetamine and LSD and that 5–MeO–DIPT copies the effects of MDMA, both schedule I hallucinogens. Three deaths have been associated with its consumption.

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

Since there is no anticipated impact on small business from this rule, no additional compliance, bookkeeping, reporting, recordkeeping or professional skills are required.

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.

Entities affected by the rule:

Enforcement agencies; the Wisconsin Department of Justice, local District Attorneys.

#### Fiscal Estimate

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

Anticipated costs incurred by private sector:

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

#### Effect on small business:

These proposed rules will be reviewed by the department’s small business review advisory committee to determine whether they will have any 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 Person

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

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before September 7, 2006 to be included in the record of rule–making proceedings.

#### TEXT OF RULE

SECTION 1. CSB 2.33 is created to read:

**CSB 2.33 Addition of alpha–methyltryptamine (AMT) to schedule I.** (1) Section 961.14 (4) (wi) is created to read:

Section 961.14 (4) (wi) Alpha–methyltryptamine, commonly known as “AMT”;

SECTION 2. CSB 2.34 is created to read:

**CSB 2.34 Addition of 5–methoxy–N, N–diisopropyltryptamine (5–MeO–DIPT)** (1) Section 961.14 (4) (wj) is created to read:

Section 961.14 (4) (wj) 5–methoxy–N, N–diisopropyltryptamine, commonly known as “5–MeO–DIPT”;

### Notice of Hearings Natural Resources [CR 06–097]

NOTICE IS HEREBY GIVEN that pursuant to s. 823.075 (1) (d), Stats., interpreting s. 823.075 (1) (d), Stats., the Department of Natural Resources will hold public hearings on the creation of s. NR 1.25, Wis. Adm. Code, relating to the definition of “generally accepted forestry management practices”. 2005 Wisconsin Act 79 created s. 823.075 (1) (d), Stats., which requires the to define “generally accepted forestry management practices” and allows the Department to incorporate into the definition, by reference, the most recent version of the Department publication entitled Wisconsin Forest Management Guidelines. The proposed rule requires updates to the Forest Management Guidelines a minimum of every five years and requires the Department to use a process that incorporates public participation, including public comments.

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

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

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

Tuesday, **August 29, 2006** at 4:00 p.m.  
Conference Room, DNR Service Center  
107 Sutliff Ave.  
Rhineland

Wednesday, **August 30, 2006** at 4:00 p.m.  
 Room 150, State Office Building  
 718 W. Clairemont  
 Eau Claire

Thursday, **August 31, 2006** at 1:00 p.m.  
 Gathering Waters Room, DNR South Central Region  
 Hdqrs.  
 3911 Fish Hatchery Road  
 Fitchburg

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Carmen Wagner at (608) 266–1667 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Fiscal Impact**

The rule proposal will result in increased costs of \$37,44 annually. While the publication may only be updated a minimum of every five years, the review of new guidance/policy to determine if an update to the publication is required will be an on–going activity.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Carmen Wagner, Division of Forestry, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 15, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Wagner.

### **Notice of Hearing**

#### **Podiatrists Affiliated Credentialing Board**

**[CR 06–056]**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Podiatrists Affiliated Credentialing Board in ss. 15.085 (5) (b), 227.11 (2), 448.665 and 448.695 (2), Stats., and interpreting s. 448.665, Stats, the Podiatrists Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. Pod 1.02 (2), 1.09 (4), 3.01 (1) and (2), and 3.02 (1) (intro.) relating to waiver of continuing podiatric medical education.

Hearing Date, Time and Location

**Date:** September 26, 2006

**Time:** 9:30 A.M.

**Location:** 1400 East Washington Avenue  
 (Enter at 55 North Dickinson Street)

Room 121A

Madison, Wisconsin

Appearances at the Hearing:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in

writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by September 26, 2006, to be included in the record of rule–making proceedings.

#### **Analysis prepared by the Department of Regulation and Licensing**

Statutory authority: Sections 15.085 (5) (b), 227.11 (2), 448.665 and 448.695 (2), Stats.

Explanation of agency authority: The Podiatrists Affiliated Credentialing Board has the authority under s. 448.665, Stats., to promulgate rules relating to continuing education.

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

Plain language analysis: Chapter Pod 3 sets forth the requirements for obtaining continuing education for podiatrists. Each biennium, podiatrists are required to obtain 50 hours of acceptable continuing education. Under the current rule, licensees may apply to the board for a waiver of this requirement provided they become ill, have a disability, or another similar circumstance. This proposed rule–making is intended to provide greater flexibility because it permits the board to consider postponing the continuing education requirements and to consider other circumstances besides disability or illness in making its determinations.

SECTION 1 amends the statutory citation for “controlled substance” to the correct cite.

SECTION 2 amends an incorrect statutory citation to the correct citation.

SECTION 3 amends an incorrect statutory citation. It also amends the requirements for obtaining a waiver of continuing education requirements by permitting the board to consider each request individually on its merits and to allow it to grant a postponement, partial waiver, or total waiver of the requirements.

SECTION 4 amends an incorrect statutory citation to the correct citation.

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

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Iowa

First time licensees are not required to complete continuing education as a prerequisite for license renewal. An exemption is allowed for disability or illness.

Illinois

The board may recommend a waiver for good cause, which includes illness or hardship as defined by rule. The rule requires a finding of “extreme hardship,” including full time service in the Armed Forces, incapacitating illness with physician documentation, physical inability to travel to continuing education sites, or other similar extenuating circumstances.

Michigan

A 60 day late renewal period is allowed. The board has defined guidelines setting forth the policy the board will follow in granting waivers. Disability, military service, absence from the continental United States, or circumstances beyond the control of the applicant is deemed sufficient for waiver by the board.

Minnesota

In the initial licensure period, a fraction of the 30 hours required must be satisfied, represented by the ratio of the

number of days the license is held in the initial licensure period to 730 days. A six month extension of the reporting deadline is allowed and two consecutive extensions may be granted for “good cause,” which includes unforeseen hardships such as illness, family emergency and military call–up.

Summary of factual data and analytical methodologies:

Continuing education rules for other professions regulated by boards connected to the Department of Regulation and Licensing allow for hardship exceptions and exemptions for initial licensees in their first full cycle of licensure. These provisions make reasonable allowances for not completing the continuing education requirements.

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

There are no additional recordkeeping or bookkeeping requirements for small businesses, the rule does not increase reporting requirements, and no professional skill, training or credential is required beyond those that must currently be maintained.

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

Anticipated costs incurred by private sector:

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

#### **Fiscal Estimate**

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

Effect on small business:

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

#### **Agency Contact Person**

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

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before September 26, 2006 to be included in the record of rule–making proceedings.

#### **TEXT OF RULE**

SECTION 1. Pod 1.02 (2) is amended to read:

Pod 1.02 (2) “Controlled substance” has the meaning under s. ~~961.10~~ 961.01 (4), Stats.

SECTION 2. Pod 1.09 (4) is amended to read:

Pod 1.09 (4) The holder of a locum tenens license to practice podiatric medicine and surgery shall practice podiatric medicine and surgery as defined in s. 448.01–(8) 448.60 (4), Stats., providing the practice is confined to the geographical area for which the license is issued.

SECTION 3. Pod 3.01 (1) and (2) are amended to read:

**Pod 3.01 Continuing podiatric medical education required; waiver.** (1) Each podiatrist required to complete the biennial training requirement under s. 448.465 ~~448.665~~, Stats., shall, in each second year at the time of making application for a certificate of registration as required under s. 448.465 ~~448.665~~, Stats., sign a statement on the application for registration certifying that the podiatrist has completed at least 50 hours of acceptable continuing educational programs relevant to the practice of podiatric medicine within the 2 calendar years immediately preceding the calendar year for which application for registration is made.

(2) A licensee may apply to the board for a postponement or waiver of the requirements of this chapter on the grounds of prolonged illness or disability, or other similar circumstances, and each case shall be individually considered on its merits by the board grounds constituting hardship. The board shall consider each request individually on its merits and may grant a postponement, partial waiver, or total waiver of the requirements.

SECTION 4. Pod 3.02 (1) (intro.) is amended to read:

**Pod 3.02 Acceptable continuing medical educational programs.** (1) (intro.) In satisfaction of the biennial training requirement under s. 448.465 ~~448.665~~, Stats., the board shall accept an educational program approved at the time of the podiatrist’s attendance by any of the following:

### **Notice of Hearing**

### **Public Instruction**

**[CR 06–094]**

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.55 (9) and 227.11 (2) (a), Stats., and interpreting s. 118.55, Stats., the Department of Public Instruction will hold a public hearing as follows to consider the amending of chapter PI 40, relating to the youth options program.

The hearing will be held as follows:

#### **Date, Time and Location**

**September 5, 2006**, Madison

3:30 – 4:30 p.m.

GEF 3 Building, 125 South Webster St., Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Beth Lewis, Consultant, at (608) 267–1062 or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

#### **Copies of Rule and Contact Person**

The administrative rule and fiscal note are available on the department’s administrative rules web page at <http://www.dpi.wi.gov/pb/rulespg.html>. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson, Administrative Rules and Federal Grants Coordinator

Department of Public Instruction

125 South Webster Street

P.O. Box 7841

Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than



September 12, 2006, will be given the same consideration as testimony presented at the hearing.

### Analysis by the Department of Public Instruction

Statute interpreted: s. 118.55, Stats.

Statutory authority: ss. 118.55 (9) and 227.11 (2) (a), Stats.

Explanation of agency authority: Section 118.55 (9), Stats., requires the department to promulgate rules to implement and administer this program.

Related statute or rule: None.

Plain language analysis: 2003 Wisconsin Act 131 modified the youth options program under s. 118.55, Stats. Chapter PI 40 will be modified to conform to the changes made under the Act, including:

Repealing the provision which required a school district to pay for ½ of comparable courses (up to six credits) for a pupil who attended a technical college for 10 or more credits in any semester.

Repealing the prohibition against taking more than 15 credit hours per semester at an IHE and the prohibition against participating in the youth options program for more than two semesters once the pupil gains 12<sup>th</sup> grade status.

Allowing a school district to establish a policy limiting its payment to the equivalent of 18 postsecondary semester credits for noncomparable courses taken for high school credit at an institution of higher education or technical college.

Providing that if a pupil receives a failing grade or fails to complete a course for which the school board has made payment under the program, the pupil's parent or guardian (or the pupil if he or she is an adult) must reimburse the school board upon the school board's request. If a school board has requested reimbursement and has not been reimbursed, the pupil is ineligible to participate in the program.

Providing that a technical college must admit an eligible pupil (unless the pupil is rejected because of disciplinary problems) if there is space available in the course after admission of individuals who are not attending the technical college under the program. This provision clarifies that pupils under the program do not take priority for admission over others applying to attend a technical college as a postsecondary student.

The rules will also make the following technical modifications:

Clarifying that regardless of whether the pupil plans to attend an IHE or technical college, only one deadline applies (May 15 for the fall semester and November 15 for the spring semester) to school boards when notifying the pupil of its determinations of high school credit.

Replacing the term "child with exceptional educational needs" with "child with a disability" to be consistent with terminology used under subchapter V of chapter 115, Stats.

Clarifying provisions relating to payment for equipment under the program.

Adding a web address to notes within the rules to allow easier accessibility to forms and other information referenced in the rules.

Eliminating the requirement that the state superintendent's decisions be sent by certified mail.

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

Comparison with rules in adjacent states:

According to the 2001 *Postsecondary Options: Dual/Concurrent Enrollment Report* compiled by the

Education Commission of the States Center for Community College Policy, the following is a summary of similar programs offered in states adjacent to Wisconsin:

Illinois: Generally students are taught by college faculty, either at the college or high school or through distance education. The Board of Education encourages AP courses. The Illinois Community College Board has developed policies governing admission to postsecondary courses by high school students. The board also has developed funding policies for dual enrollment courses. Most college courses are offered by community colleges. The student or school district pays for courses. It is a local decision as to who pays the tuition costs for dually enrolled students.

Iowa: Generally students are taught by college faculty, either at the college or high school or through distance education. The program allows 11<sup>th</sup> and 12<sup>th</sup> grade students to enroll part time in nonsectarian college courses in eligible institutions. A gifted and talented student, according to the school's criteria, may also enroll in college courses. A student may enroll part-time in an eligible postsecondary institution for no more than four semester terms or six quarter terms unless identified as a gifted and talented 9<sup>th</sup>- or 10<sup>th</sup>-grade student. Students may enroll in any of the three state universities, the 15 public community colleges, and accredited private institutions as defined in Iowa's code and are eligible for the Iowa Tuition Grant Program. Students must meet entrance requirements for postsecondary courses as determined by the postsecondary institution before they can enroll. Students may not enroll in eligible postsecondary courses if the high school in which a student is enrolled offers a comparable course. The student or school district pays for the courses. If the student does not successfully complete the college courses, the student must pay.

Michigan: Generally students are taught by college faculty, either at the college or high school or through distance education. The program allows high school students to participate in dual enrollment or other postsecondary options. Qualified students for dual enrollment must take the MEAP High School Test and must be endorsed in the subject area in which they wish to dually enroll. If a subject has no endorsement, students are eligible to dually enroll in those areas as long as they have taken the MEAP High School Test. An eligible student must be enrolled in at least one high school class in at least grade 11 in a school district in Michigan, except a foreign exchange student enrolled under a cultural exchange program. The postsecondary enrollment options program establishes eligibility criteria for students, institutions and courses. It mandates eligible charges for tuition, course fees and registration fees that can be charged to a school district. It creates requirements for enrollment and credit. The program requires schools to provide postsecondary options counseling and mandates school districts to report to the Department of Education. The school district pays for the courses.

Minnesota: Generally students are taught by college faculty, either at the college or high school or through distance education. This is the oldest dual enrollment program in the United States. All high school juniors/seniors, except cultural exchange students, and some adults 21 years of age who do not have a high school diploma, are eligible to participate under the High School Graduation Incentives Act. Students may enroll in any public or private postsecondary institution. The student may only enroll in nonsectarian courses. The student or the state pays for the courses.

Summary of factual data and analytical methodologies:

The statutory language relating to the Youth Options program under s. 118.55, was modified thereby necessitating

the amending of its corresponding administrative code, Chapter PI 40.

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

Anticipated costs incurred by private sector: None.

Effect on small business:

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

#### **Fiscal Estimate**

The proposed rule itself is not expected to have a fiscal effect separate from the legislation modified under the Act. Therefore, this fiscal note is based on the provisions in 2003 Wisconsin Act 131. The provisions under the Act which may have a fiscal effect on school district costs include:

1. Repealing the provision which required a school district to pay for ½ of comparable courses (up to six credits) for a pupil who attended a technical college for 10 or more credits in any semester. The amount saved by a school district would depend on the number of pupils participating in the technical college, the total number of credits taken, the total number of comparable credits taken, and the district's average per pupil cost in the previous school year. These amounts are indeterminate. This provision will have no state fiscal effect.

2. Repealing the prohibition against taking more than 15 credit hours per semester at an institution of higher education (IHE) and allowing a school district to establish a policy limiting its payment to the equivalent of 18 postsecondary semester credits for noncomparable courses taken for high school credit at an IHE or technical college. The amount

saved by a school district would depend on whether it elects to establish a policy limiting its payment to 18 postsecondary semester credits for noncomparable courses taken at an IHE or technical college. If a district does establish such a policy, payment could be limited to 18 semester credits taken over 4 semesters. Using the statutory payment for private universities under s. 118.55 (1) (c), Stats., of \$273 per semester credits, payment over 4 semesters would be \$4,914 (18 semester credits X \$273 per credit). Under the previous language, a district could pay up to \$16,380 (15 semester credits X 4 semesters X \$273 per credit). This provision will have no state fiscal effect.

3. Providing that if a pupil receives a failing grade or fails to complete a course for which the school board has made payment under the program, the pupil's parent or guardian (or the pupil if he or she is an adult) must reimburse the school board upon the school board's request. This provision benefits school districts fiscally by allowing them to recover tuition or fees paid for courses that a pupil drops or fails. Because it is unknown how many pupils fail or drop courses or whether a school district could actually recover the payment from the pupil or his or her parent, these fiscal benefits are indeterminate. This provision will have no state fiscal effect.

4. Eliminating the requirement that the state superintendent's decisions be sent by certified mail. The department sends approximately 20 letters a year at \$2.40 per letter for a savings of \$48 annually. This provision will have no local fiscal effect.

#### **Initial Regulatory Flexibility Analysis**

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



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## Submittal of proposed rules to the legislature

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

### **Agriculture, Trade and Consumer Protection**

**(CR 05–028)**

Chs. ATCP 1, 11, 13, 17, 29, 40, 42, 50, 55, 69, 70, 80, 81, 82, 85, 88, 92, 105, 111, 113, 118, 131, 134, 155 and 158, relating to technical rule changes.

### **Natural Resources**

**(CR 06–027)**

Ch. NR 46, relating to administration of the forest crop law and managed forest law.

### **Natural Resources**

**(CR 06–022)**

Ch. NR 47, relating to forestry research and development grant program.

### **Natural Resources**

**(CR 06–024)**

Chs. NR 135 and 340, relating to the reclamation of nonmetallic mining sites.

### **Natural Resources**

**(CR 06–026)**

Chs. NR 514 and 516, relating to landfilling of solid waste.

### **Pharmacy Examining Board**

**(CR 06–050)**

Chs. Phar 2 and 17, relating to a foreign graduate internship.

### **Pharmacy Examining Board**

**(CR 06–052)**

Ch. Phar 8, relating to controlled substances theft and loss reporting requirements.

### **Workforce Development**

**(CR 06–044)**

Chs. DWD 12, 16, 17, 55 and 56, relating to Wisconsin Works, Emergency Assistance and Child Care.

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## Rule orders filed with the revisor of statutes bureau

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

### **Commerce (CR 06–040)**

An order affecting ch. Comm 62, relating to automatic fire suppression systems for student housing serving colleges and universities.

Effective 10–1–06.

### **Employee Trust Funds (CR 05–014)**

An order affecting ch. ETF 10, relating to separate retirement system investments in the fixed and variable retirement investment trusts.

Effective 10–1–06.

### **Financial Institutions – Banking (CR 06–045)**

An order affecting ch. DFI–Bkg 74, relating to collection

agencies.  
Effective 10–1–06.

### **Regulation and Licensing (CR 06–014)**

An order affecting ch. RL 128, relating to educational programs for auctioneers.

Effective 10–1–06.

### **Revenue (CR 06–030)**

An order affecting ch. Tax 8, relating to liquor wholesaler warehouse facilities.

Effective 10–1–06.

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