

Wisconsin Administrative Register

No. 608



Publication Date: August 31, 2006

Effective Date: September 1, 2006



Revisor of Statutes Bureau
<http://www.legis.state.wi.us/rsb/code.htm>

The 2003 – 04 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*[®] CD-ROM

Bound Volumes:

Prices for the 2003 – 04 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

Hard Cover	Hard Cover	Soft Cover	Soft Cover
<u>With Postage</u>	<u>Without Postage</u>	<u>With Postage</u>	<u>Without Postage</u>
\$152.00	\$146.00	\$130.00	\$124.00

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

WisLaw[®] CD-ROM:

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

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

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

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

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

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

Table of contents

Emergency rules now in effect.	Pages 4 to 10
Administration:	Rules relating to cost benefit analyses of contractual services.
Agriculture, Trade and Consumer Protection:	Rules relating to a poultry flock certification program. Rules relating to mobile air conditioners; reclaiming or recycling refrigerant.
Commerce:	<u>Commercial Buildings, Chs. Comm 61 to 65</u> Rules relating to automatic fire suppression for student housing facilities serving colleges and universities. <u>Financial Resources for Businesses and Communities, Chs. Comm 105 to 131</u> Rules relating to diesel truck idling reduction grants.
Corrections:	Rules relating to a sex offender registration fee.
Elections Board:	Rules relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee. Rules affecting s. EIBd 3.04 , relating to election day registration and the requirement to provide a driver's license number or other form of identification to register at the polls. [First Appearance]
Emergency Management:	Rules relating to disaster assistance for local governments.
Health and Family Services:	Rules relating to licensing emergency medical technicians and affecting small businesses. Rules relating to prescribing forms for use by physicians, technicians and tissue bank employees when removing organs and tissue, other than cardiovascular tissue from decedents.
Natural Resources:	<u>Fish, Game, etc., Chs. NR 1—</u> Rules relating to commercial fishing for lake trout in Lake Superior. Rules relating to regulation of firewood entering and exiting department lands and affecting small businesses. <u>Environmental Protection—Water Regulation, Chs. NR 300—</u> Rules relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways. Rules relating to shore erosion control on rivers and streams.
Regulation and Licensing:	Rules relating to a code of conduct and renewal requirements for substance abuse professionals.

Transportation:	Rules relating to contractual service procurement.
Workforce Development:	<u>Labor Standards, Chs. DWD 270–279</u> Rules relating to overtime pay for employees performing companionship services.
Scope statements.	Pages 11 to 12
Financial Institutions – Corporate and Consumer Services:	Rules affecting ch. DFI–CCS 5, relating to UCC searches.
Health and Family Services:	Rules affecting ch. HFS 85, relating to non–profit corporations as guardians.
Transportation:	Rules affecting s. Trans 102.15 for proof of name and date of birth, identity, residency, and Social Security number.
Workforce Development:	Rules affecting ch. DWD 295, relating to enforcement of apprentice contracts.
Submittal of rules to legislative council clearinghouse.	Page 13
Natural Resources:	Rules affecting s. NR 1.25, relating to the definition of “generally accepted forestry management practices.”
Public Instruction:	Rules affecting ch. PI 30, relating to a grant program for high cost special education pupils.
Rule–making notices.	Pages 14 to 19
Elections Board:	Hearing to consider rules affecting s. EIBd 3.04, relating to federal law that requires persons who have been issued a current and valid driver’s license to list that number in completing a voter registration application. Hearing to consider rules affecting s. EIBd 1.395, relating to use of federal campaign funds in a campaign for a Wisconsin elective office.
Transportation:	Hearing to consider rules affecting ch. Trans 112, relating to medical standards for driver licensing and general standards for school bus endorsements.
Submittal of proposed rules to the legislature.	Page 20
Chiropractic Examining Board:	Rules affecting chs. Chir 4, 5, 6, and 12, relating to nutritional counseling certification.
Employment Relations Commission:	Rules affecting ch. ERC 33 Appendix Forms A, B and C, relating to procedures for the administration of the Municipal Employment Relations Act.
Marriage and Family Therapy, Professional Counseling and Social Work Examining Board:	Rules affecting ch. MPSW 11, relating to required examinations for licensure as a professional counselor. Rules affecting ch. MPSW 13, relating to psychotherapeutic counseling by professional counselors.
Natural Resources:	Rules affecting ch. NR 102, relating to designation of waters as outstanding or exceptional resource waters.

Regulation and Licensing:	Rules affecting chs. RL 80 to 87, relating to definitions, experience, educational courses, continuing education, conduct and renewal for real estate appraisers.
Rule orders filed with the revisor of statutes bureau.	Page 21
Agriculture, Trade and Consumer Protection:	CR 06–009 – An order affecting chs. ATCP 10, 11 and 12, relating to animal diseases and movement.
Health and Family Services:	CR 06–021 – An order affecting ch. HFS 157, relating to protecting public health by regulating the sources and use of ionizing radiation.
Marriage and Family Therapy, Professional Counseling and Social Work Examining Board:	CR 05–098 – An order affecting ch. MPSW 3, relating to human services internship requirements for a social worker training certificate. CR 05–119 – An order affecting ch. MPSW 14, relating to continuing education credits for professional counselors. CR 05–120 – An order affecting ch. MPSW 8, relating to continuing education credits for social workers. CR 05–122 – An order affecting ch. MPSW 19, relating to continuing education credits for marriage and family therapists.
Transportation:	CR 06–048 – An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.
Rules published with this register and final regulatory flexibility analyses.	Pages 22 to 23
Sections affected by rule revisions and corrections.	Page 24
Sections affected by revisor’s corrections not published:	Pages 25 to 29
Executive orders.	Page 30

Emergency rules now in effect

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

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

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

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

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

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

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

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

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

Commerce

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

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

Exemption from Finding of Emergency

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

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

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

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

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 (2)

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

Finding of Emergency

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

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

state campaign committee, if state law permitted, and subject to the state law's requirements and restrictions.

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, s. EIBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

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

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

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

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

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

Finding of Emergency

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

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

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

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

Publication Date: July 31, 2006
Effective Date: July 31, 2006
Expiration Date: December 28, 2006
Hearing Date: October 4, 2006
 [See Notice this Register]

Emergency Management

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

Finding of Emergency

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

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

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

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

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

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 (2)
(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 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

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: October 4, 2006
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

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

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

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: **October 12, 2006**

* 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.

Scope statements

Financial Institutions – Corporate and Consumer Services

Subject

Rules relating to UCC search requests.

Policy Analysis

Objective of the rule. The objective of the rule is to repeal and recreate s. DFI—CCS 5.04. Under current law, in creating search results for records of UCC documents filed with the department, certain standardized search logic is applied to the name presented to the filing officer by the person requesting the search. The purpose of this rule is to set forth, in recreated s. DFI—CCS 5.04, revised standardized search logic. Under the proposed rule, the standardized search logic set forth more accurately reflects the methodology used.

Comparison with federal regulations

None.

Statutory authority

Sections 227.11 (2) and 409.526 (1), Stats.

Entities affected by the rule

Any persons or entities conducting UCC searches.

Staff time required

100 hours.

B. To include requirements for corporate guardians to maintain agency policies in the areas of abuse and neglect prevention, complaint and grievance investigations, and advance directives.

C. To reflect the increase in the number of adults in need of guardianship and the increase in their acuity level.

D. To incorporate recent changes to 2005 Wisconsin Act 387 to ch. 880, Stats., relating to the limitation on the number of wards of a corporate guardian.

Comparison with federal regulations

There are no comparable federal regulations.

Statutory authority

Sections 55.02, 227.11 (2) (a), and 880.35, Stats.

Entities affected by the rule

Entities that may be affected by the proposed rule include non-profit corporate guardians and their wards, advocacy groups including Disability Rights Wisconsin, Inc., and the Coalition of Wisconsin Aging Groups, County Adult Protective Services staff including County Departments of Social Services, Human Services and Community Programs and County Registers in Probate.

Staff time required

The Department estimates that it will take approximately 100 hours to develop the proposed rule. The Department will seek the participation of Disability Rights Wisconsin, Inc.; the Coalition of Wisconsin Aging Groups; the Wisconsin Guardianship Association; County Adult Protective Services staff; and County Registers in Probate.

Health and Family Services

Subject

The Department of Health and Family Services proposes to revise ch. HFS 85, relating to non-profit corporations as guardians.

Policy Analysis

Objective of the rule. Chapter HFS 85 establishes criteria by which the Department of Health and Family Services finds a non-profit corporation suitable to serve as guardian of persons who are determined by a court to be incompetent. Criteria include the number of wards a corporation is authorized to assume for guardianship, the number of staff needed to carry out the responsibilities of a guardian, staff qualifications, either by training or by experience, proof of financial stability, conflict of interest standards and the frequency of personal contact with wards. The rule also contains provisions for the Department to withdraw its finding of suitability if the corporate guardian no longer meets the eligibility criteria, and the rule provides appeal rights for any party adversely affected by this action.

The Department proposes to revise Chapter HFS 85 for the following reasons.

A. To reflect current standards of practice for corporate guardianships in the areas of staff qualification and training, caregiver background checks, adequacy of staff, contacts with wards and conflicts of interest standards.

Transportation

Subject

Objective of the rule. This rule making will amend s. Trans 102.15 for proof of name and date of birth, identity, residency, and Social Security number. The rules limit documents satisfactory to prove identity and residency in this state to be consistent with other states and standards established by the American Association of Motor Vehicle Administrators (AAMVA).

Policy Analysis

All original applicants for a driver's license or identification card are required to provide proof of name and date of birth, identity, and residency. This rule making changes the list of documents that can be accepted for proof of name and date of birth, identity, and residency to be consistent with other states with legal presence.

Comparison with federal regulations

Proposed changes will move Wisconsin towards compliance with the federal REAL ID Act of 2005 (P.L. 109-13).

Entities affected by the rule

None.

Statutory authority

Sections 343.06 (1) (k) and 343.14 (2), Stats.

Staff time required

Two weeks.

Workforce Development**Subject**

Enforcement of Apprenticeship Contracts.

Policy Analysis

The current procedure for enforcement of an apprentice contract allows any person alleging that an apprentice contract has not been complied with to file a complaint with the division. The division may investigate the complaint and attempt to resolve it by conference, conciliation, and persuasion. If the division is unable to resolve the complaint by conference, conciliation, or persuasion, it notifies the parties. If the complaint requested that the division cancel the apprentice contract, the notice informs the parties that the apprentice contract will be cancelled 20 days from the date of the notice, unless any party receiving the notice makes a request to the division in writing for a hearing on the matter.

The department, the Apprenticeship Advisory Council, and apprenticeship customers agree that there is a timeliness problem with the current procedure. The current conciliation process takes 5–6 months and the full appeal process takes 9 months to one year. During this time, the apprentice stays in apprenticeship status, they are in at the time of the appeal. If in an active status, apprentices who have failed school still attend school, and apprentices who have demonstrated that they are not capable of doing the work still need to be placed at job sites.

The proposed rule repeals the conference, conciliation, and persuasion provision. If a party to an apprentice contract wants to cancel the contract, the department will send an intent to cancel letter. The apprentice has 20 days to object and explain why the contract should not be cancelled. If the department receives a timely objection, it will conduct an investigation. If the investigation supports cancellation, the apprentice will be promptly cancelled. The apprentice may appeal the decision but the apprenticeship will remain cancelled throughout the appeal process.

The proposed rule will also require that a hearing be transcribed and allow a party to obtain a copy of the transcript by purchasing a copy from the transcription agency. The current rule does not require transcription unless a written request is made by any party. However, under current practice, the hearing examiners generally request a transcription. A written transcript also supports administrative review. In addition, the proposed rule will replace the term “indenture agreement” with “apprentice contract,” replace “division” with “department,” and replace “journeyman” with “journey worker.”

Statutory authority

Sections 106.01 (9), 103.005 (1), and 227.11 (2), Stats.

Entities affected by the rule

Apprentices, apprentice sponsors, and labor unions.

Comparison with federal regulations

There are no comparable federal requirements.

Staff time required

130 hours.

Submittal of rules to legislative council clearinghouse

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

Natural Resources

On July 24, 2006, the Wisconsin Department of Natural Resources submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends s. NR 1.25, relating to the definition of “generally accepted forestry management practices.”

Agency Procedure for Promulgation

Public hearings will be held August 29, 30 and 31, 2006.

Contact Person

The Division of Forestry is primarily responsible for promulgation of this rule. If you have questions regarding this rule, you may contact Carmen Wagner, 608/266-1667.

Public Instruction

On August 4, 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 30, relating to a grant program for high cost special education pupils.

Agency Procedure for Promulgation

Public hearings will be scheduled.

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 Stephanie Petska, Director, Special Education, 608/266-1781.

Rule-making notices

Notice of Hearing Elections Board

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting ss. 5.02 (6m), (14), (17), 6.27, 6.29, 6.33, 6.34, 6.36, 6.40, 6.48, 6.50, 6.54, 6.55, and 6.56, Stats., the State Elections Board will hold a public hearing at the Brookfield City Hall, Common Council Chambers, located at 2000 North Calhoun Road, in the City of Brookfield, Wisconsin, on the **4th of October, 2006**, at 9:30 a.m., to consider adoption of emergency rule s. ElBd 3.04.

Analysis Prepared by the State Elections Board

This amended rule interprets ss. 5.02 (6m), (14), (17), 6.27, 6.29, 6.33, 6.34, 6.36, 6.40, 6.48, 6.50, 6.54, 6.55, and 6.56, Stats. The rule requires that persons who register on election day and who have been issued a current and valid Wisconsin driver's license number shall provide that number in completing the registration form, or shall be allowed to vote a provisional ballot under s. 6.97, Stats.

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

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

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., the Elections Board hereby creates Rule ElBd 3.04 interpreting ss. 5.02 (6m), (14), (17), 6.27, 6.29, 6.33, 6.34, 6.36, 6.40, 6.48, 6.50, 6.54, 6.55, and 6.56, Stats.:

SECTION 1. ElBd 3.04 is created to read:

ELBD 3.04 Requiring provision of certain information by election-day voter registration applicants. (1) A qualified elector registering to vote at a polling place on election day, who has been issued a current and valid Wisconsin driver's license, shall list his or her Wisconsin driver's license number on the voter registration application before the registration may be accepted or processed and before the person is allowed to vote at any election in Wisconsin. A Wisconsin driver's license that has expired, or has been suspended or revoked, is not a current and valid driver's license.

(2) If a current and valid Wisconsin driver's license has been issued to the registration applicant, but the registration applicant does not list the driver's license number on the registration application, the applicant will be allowed to vote a provisional ballot under s. 6.97, Stats. Individuals voting provisional ballots shall be given the written information required under s. 6.97 (1), Stats. If the person voting a provisional ballot provides his or her driver's license number to the municipal clerk, by any means feasible, including but not limited to in person, email, facsimile or telephone, not later than 4:00 p.m., on the day following the day of the election, the person's ballot will be counted.

(3) If a current and valid Wisconsin driver's license has not been issued to the applicant, the applicant shall list on the registration application either the last four digits of the applicant's Social Security Number, or the Wisconsin Department of Transportation identification card number if one has been issued to the applicant. If neither a driver's license nor a Social Security Number has been issued to the applicant, the applicant shall check the appropriate box on the application before the application may be accepted or processed and the registrant is allowed to vote.

Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Contact Person

George A. Dunst
Legal Counsel, State Elections Board
17 West Main Street, P.O. Box 2973
Madison, Wisconsin 53701-2973
Phone 266-0136

Notice of Hearing Elections Board

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting ss. 11.01 (1), (6), (15), (16), 11.05 (1), (7), 11.06 (1), (3), (4), (12), 11.07, 11.10 (4), 11.24 (2), 11.26 (4), (10), 11.38 (1), Stats., the State Elections Board will hold a public hearing on the adoption of the rule proposed in this notice on Wednesday, **October 4, 2006**, beginning at 9:30 a.m., at the Brookfield City Hall, Common Council Chambers, located at 2000 North Calhoun Road, to consider the adoption of rule s. ElBd 1.395, relating to use of federal campaign funds in a campaign for a Wisconsin elective office.

Analysis Prepared by State Elections Board

Statutory authority: ss. 5.05 (1) (f) and 227.11 (2) (a).

Statutes interpreted: ss. 11.01 (1), (6), (15), (16), 11.05 (1), (7), 11.06 (1), (3), (4), (12), 11.07, 11.10 (4), 11.24 (2), 11.26 (4), (10), 11.38 (1), Stats.

This rule interprets ss. 11.01 (1), (6), (15), (16), 11.05 (1), (7), 11.06 (1), (3), (4), (12), 11.07, 11.10 (4), 11.24 (2), 11.26 (4), (10), 11.38 (1), Stats. The rule prohibits the use, for political purposes in Wisconsin, of funds that have been converted by a federal campaign committee to a state

campaign committee, if those funds were the result of contributions to the federal campaign committee that could not have been given directly to a state campaign committee under Wisconsin law.

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 previous rule, EIBd 1.39, Wis. Adm. Code, allowed 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.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., the Elections Board hereby creates Rule EIBd 1.395 interpreting ss. 11.01 (1), (6), (15), (16), 11.05 (1), (7), 11.06 (1), (3), (4), (12), 11.07, 11.10 (4), 11.24 (2), 11.26 (4), (10), 11.38 (1), Stats., as follows:

SECTION 1. EIBd 1.395 is created to read:

ELBD 1.395 USE OF FUNDS TRANSFERRED BY A FEDERAL CAMPAIGN COMMITTEE TO A STATE COMMITTEE RESTRICTED

EIBd 1.395 Use of funds transferred by a federal campaign committee to a state committee restricted.

Funds which have been converted by a federal campaign committee to a Wisconsin state campaign committee may not be used for political purposes in Wisconsin if the contribution of those funds to the federal campaign committee would not have complied with Wisconsin law if the contribution had been made directly to a Wisconsin campaign committee. The state campaign committee shall divest itself of such money in compliance with s. 11.26 (11), Stats.

Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Contact Person

George A. Dunst
 Legal Counsel, State Elections Board
 17 West Main Street, P.O. Box 2973
 Madison, Wisconsin 53701-2973
 Phone 266-0136

**Notice of Hearing
 Transportation**

NOTICE IS HEREBY GIVEN that pursuant to ss. 50.01 (1b), 121.555 (3) (c) and (4) (a), 146.82 (3), 343.12 (2), 343.16 (5), 343.20 (1), 343.21 (s), 343.23 (2), 343.237, 441.16 (2), Stats., and interpreting ss. 50.01 (1b), 121.555 (3) (c) and (4) (a), 146.82 (3), 343.12 (2), 343.20 (1), 343.21 (s), 343.23 (2), 343.237, 343.16 (5), 441.16 (2), Stats., the Department of Transportation will hold a public hearing in Room 394 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **19th day of September, 2006**, at 10:00 AM, to consider the amendment of ch. Trans 112, Wisconsin Administrative Code, relating to medical standards for driver licensing and general standards for school bus endorsements.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 50.01 (1b), 121.555 (3) (c), 121.555 (4) (a), 146.82 (3), 343.12 (2), 343.20 (1), 343.21 (s), 343.23 (2), 343.237, 343.16 (5), 441.16 (2), Stats.

Statutory authority: ss. 50.01 (1b), 121.555 (3) (c) and (4) (a), 146.82 (3), 343.12 (2), 343.16 (5), 343.20 (1), 343.21 (s), 343.23 (2), 343.237, 441.16 (2), Stats.

Explanation of agency authority: The Wisconsin Department of Transportation is responsible for licensing drivers to operate school buses. Current law requires the Department of Transportation to complete background and criminal history checks of school bus drivers and to disqualify drivers with certain criminal convictions. Current law also authorizes Advanced Practice Nurse Prescribers ("APNP") to take certain medically related actions, including reporting drivers the APNP believes are medically, physically or mentally incapable of exercising reasonable control over a motor vehicle. Current law prohibits the Department from issuing a school bus driver's license to any person who lacks sufficient use of both hands and the foot normally employed to operate the foot brake and foot accelerator correctly and efficiently, or who does not meet physical standards established by the Department. Upon receiving such reports from qualified medical practitioners, the Department may investigate and require medical re-examination to determine the reported person's ability to drive safely.

Related statute or rule: Section 343.12, Stats., and ch. Trans 112, Wis. Admin. Code.

Plain language analysis: This rule making proposes three unrelated changes to ch. Trans 112. First, 2005 Wisconsin Act 187 requires the Department of Transportation to accept reports prepared by an Advanced Practice Nurse Prescriber ("APNP") of a driver's ability or capacity to operate a motor vehicle. Upon receiving such a report from an APNP, the Department must determine whether to require the reported driver to submit to a special examination intended to determine whether the person suffers from incompetence, physical or mental disability, disease or other condition which might prevent the person from exercising reasonable and ordinary control over a motor vehicle. Prior to 2005 Wisconsin Act 187, The Department could not consider reports submitted by APNP, but could consider only reports submitted by medical doctors, doctors of osteopathy and optometrists.

Next, the proposed rule specifies that the Department may require a driving evaluation of any person having a significant limb defect or limitation, including full or partial amputation that could affect a person's ability to drive safely. The Department has long required such re-examinations, but does so under its general authority to re-examine drivers having functional ability deficits. The Federal government currently requires this re-examination for operators of commercial motor vehicles and Wisconsin adopted these Federal Standards in 1996 in order to maintain Federal Highway Funding.

Last, the proposed rule clarifies that the conviction of any disqualifying crime (the conviction for which disqualifies a person from operating a school bus) that carries an obsolete or renumbered statutory reference, will be considered a conviction under the current statute number if the offenses are substantially similar. For example, a 1997 conviction under s. 161.46, Stats., for distributing a controlled substances to persons under age 18, will be considered a conviction under s. 961.46, Stats., because of statute renumbering done by 1995 Wisconsin Act 448. Chapter Trans 112 currently specifies that conviction under s. 961.46, Stats., disqualifies a person from operating a school bus, but does not mention earlier statutory citations for that same offense.

Summary of, and preliminary comparison with, existing or proposed federal regulation: 49 C.F.R. Part 390.5, federal motor carrier safety regulations, defines "medical examiner" to include an Advanced Practice Nurse. 49 C.F.R. Part 391.41 prohibits any person having any impairment of an arm, foot, leg or hand or finger used for grasping that might interfere with normal tasks associated with the safe operation of a commercial motor vehicle from driving a commercial motor vehicle unless they have been granted a skill performance evaluation certificate, which is a series of tests conducted by the federal motor carrier safety administration ("FMCSA").

Comparison with Rules in Adjacent States:

Michigan: Per John Gregurich, Driver Analyst, Driver Assessment Division of the Michigan Dept. of State: The Department of State Administrative Rules requires that a licensed doctor certify the medical documentation submitted on a driver's behalf. On additional questioning, John clarified that although Michigan will accept an APNP report, it must be co-signed by an MD or doctor of osteopathy ("DO").

Per the director of the Michigan Nurses Association, Advanced Practice Nurses were just awarded the right to have authority for medical reports related to driving March 2006. Michigan differs from Wisconsin in that they do not have a large pool of NPs who are not APNPs. Michigan did not do grandfathering when they accepted national credentialing standards. Virtually all NPs in Michigan are APNPs (Master's prepared, board certified).

The Department of State will test drivers who have had leg amputations or an impairment of a limb when requested by a rehabilitation agency, doctor, or other interested party that indicates the loss or impairment may affect the person's ability to drive safely.

The Michigan Motor Vehicle Code, section 257.312f, prohibits the Department of State from issuing a CDL license to a person whose license was suspended in the preceding 36 months unless due to a medical or failure to appear at driver re-exam; the driver was convicted of a 6 point violation in 24 months preceding application (257.625); the driver already has had his/her application for a CDL license suspended, revoked, canceled or denied; the driver would have been suspended for a mandatory licensing action; or the driver's license is already suspended, revoked, denied within 36 months of application.

Minnesota: Online survey of the Minnesota statutes yielded answers. Background:(Website) From Minnesota statutes:

171.321 Qualifications of school bus driver.

Subd. 3. **Records check of applicant.** (a) Before issuing or renewing a school bus endorsement, the commissioner shall conduct a criminal history and driver's license records check of the applicant. The commissioner may also conduct the check at any time while a person is so licensed. The check must consist of a criminal history check of the state criminal records repository and a check of the driver's license records system. If the applicant has resided in Minnesota for less than five years, the check must also include a national criminal history check. The commissioner shall accept the national criminal history check request and the fingerprints of the applicant and is authorized to exchange fingerprints with the Federal Bureau of Investigation and request the Federal Bureau of Investigation to conduct a criminal history check. The applicant's failure to cooperate with the commissioner in conducting the records check is reasonable cause to deny an application or cancel a school bus endorsement. The commissioner may not release the results of the records check to any person except the applicant or the applicant's designee in writing.

(b) The commissioner may issue to an otherwise qualified applicant a temporary school bus endorsement, effective for no more than 180 days, upon presentation of (1) an affidavit by the applicant that the applicant has not been convicted of a disqualifying offense and (2) a criminal history check from each state of residence for the previous five years. The criminal history check may be conducted and prepared by any public or private source acceptable to the commissioner. The commissioner may reissue the temporary endorsement if the national criminal records repository check is timely submitted but not completed within the 180-day period.

Also:

171.3215 Canceling bus endorsement for certain offenses.

Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the meanings given them.

(b) "School bus driver" means a person possessing a school bus driver's endorsement on a valid Minnesota driver's license or a person possessing a valid Minnesota driver's license who drives a vehicle with a seating capacity of ten or less persons used as a school bus.

(c) "Disqualifying offense" includes (1) any felony offense, (2) any misdemeanor, gross misdemeanor, or felony violation of chapter 152, (3) any violation under section [609.3451](#), [609.746](#), subdivision 1, [617.23](#), [617.246](#), [617.247](#), or [617.293](#), or (4) while driving, operating, or being in physical control of a school bus or a Head Start bus, a violation of section [169A.20](#) or a similar statute or ordinance from another state.

(d) "Head Start bus driver" means a person possessing a valid Minnesota driver's license:

(1) with a passenger endorsement, who drives a Head Start bus;

(2) with a school bus driver's endorsement, who drives a Head Start bus; or

(3) who drives a vehicle with a seating capacity of ten or fewer persons used as a Head Start bus.

Subd. 2. **Cancellation for disqualifying and other offenses.** Within ten days of receiving notice under section [631.40](#), subdivision 1a, or otherwise receiving notice for a nonresident driver, that a school bus driver has been convicted of a disqualifying offense, the commissioner shall permanently cancel the school bus driver's endorsement on the offender's driver's license and in the case of a nonresident,

the driver's privilege to operate a school bus in Minnesota. A school bus driver whose endorsement or privilege to operate a school bus in Minnesota has been permanently canceled may not apply for reinstatement. Within ten days of receiving notice under section 631.40, subdivision 1a, or otherwise receiving notice for a nonresident driver, that a school bus driver has been convicted of a violation of section 169A.20, or a similar statute or ordinance from another state, and within ten days of revoking a school bus driver's license under section 169A.52, the commissioner shall cancel the school bus driver's endorsement on the offender's driver's license or the nonresident's privilege to operate a school bus in Minnesota for five years. After five years, a school bus driver may apply to the commissioner for reinstatement. Even after five years, cancellation of a school bus driver's endorsement or a nonresident's privilege to operate a school bus in Minnesota for a violation under section 169A.20, sections 169A.50 to 169A.53, or a similar statute or ordinance from another state, shall remain in effect until the driver provides proof of successful completion of an alcohol or controlled substance treatment program. For a first offense, proof of completion is required only if treatment was ordered as part of a chemical use assessment. Within ten days of receiving notice under section 631.40, subdivision 1a, or otherwise receiving notice for a nonresident driver, that a school bus driver has been convicted of a fourth moving violation in the last three years, the commissioner shall cancel the school bus driver's endorsement on the offender's driver's license or the nonresident's privilege to operate a school bus in Minnesota until one year has elapsed since the last conviction. A school bus driver who has no new convictions after one year may apply for reinstatement. Upon canceling the offender's school bus driver's endorsement, the commissioner shall immediately notify the licensed offender of the cancellation in writing, by depositing in the United States post office a notice addressed to the licensed offender at the licensed offender's last known address, with postage prepaid thereon.

Subd. 2a. Cancellation for crime against minor. Within ten days of receiving notice that a Head Start bus driver has committed a crime against a minor, the commissioner shall permanently cancel the passenger endorsement on the offender's driver's license. Upon canceling the offender's passenger endorsement, the commissioner shall immediately notify the licensed offender of the cancellation in writing, by depositing in the United States post office a notice addressed to the licensed offender at the licensed offender's last known address, with postage prepaid thereon. For purposes of this subdivision, "crime against a minor" means an act committed against a minor victim that constitutes a violation of section 609.185, 609.19, 609.195, 609.20, 609.205, 609.21, subdivision 1, 609.221, 609.222, 609.223, 609.342, 609.343, 609.344, 609.345, 609.352, or a felony violation of section 609.322, 609.324, or 609.377.

Subd. 3. Background check. Before issuing or renewing a driver's license with a school bus driver's endorsement, the commissioner shall conduct an investigation to determine if the applicant has been convicted of committing a disqualifying offense, four moving violations in the previous three years, a violation of section 169A.20 or a similar statute or ordinance from another state, a gross misdemeanor, or if the applicant's driver's license has been revoked under section 169A.52 169A.20. The commissioner shall not issue a new bus driver's endorsement and shall not renew an existing bus driver's endorsement if the applicant has been convicted of committing a disqualifying offense. The commissioner shall not issue a new bus driver's endorsement and shall not renew an existing bus driver's endorsement if, within the previous five years, the applicant has been convicted of committing a

violation of section , or a similar statute or ordinance from another state, a gross misdemeanor, or if the applicant's driver's license has been revoked under section 169A.52, or if, within the previous three years, the applicant has been convicted of four moving violations. An applicant who has been convicted of violating section 169A.20, or a similar statute or ordinance from another state, or who has had a license revocation under section 169A.52 within the previous ten years must show proof of successful completion of an alcohol or controlled substance treatment program in order to receive a bus driver's endorsement. For a first offense, proof of completion is required only if treatment was ordered as part of a chemical use assessment. A school district or contractor that employs a nonresident school bus driver must conduct a background check of the employee's driving record and criminal history in both Minnesota and the driver's state of residence. Convictions for disqualifying offenses, gross misdemeanors, a fourth moving violation within the previous three years, or violations of section 169A.20, or a similar statute or ordinance in another state, must be reported to the Department of Public Safety.

Subd. 4. Waiver of permanent cancellation. (a) The commissioner of public safety or the commissioner's designee, in consultation with the Division of Driver and Vehicle Services, may waive the permanent cancellation requirement of this section for a person convicted of a misdemeanor, a gross misdemeanor, a nonfelony violation of chapter 152, or a felony that is not a violent crime under section 609.1095.

(b) After notice to the requesting school district and contract provider of school bus transportation, the commissioner may waive the permanent cancellation requirement after ten years have elapsed since the person was convicted of a violation of section 609.582, subdivision 2, 3, or 4.

Illinois: Only an MD/DO can complete medical reports. Any nurse practitioner may fill out the form but an MD/DO must sign it (Medical Review). Illinois DMV does no functional assessment of drivers at the DMV counters.

From the Illinois Secretary of State's web site re: school bus licensees, available at http://www.cyberdriveillinois.com/departments/drivers/drivers_license/schoolbus.html:

Possess a valid driver's license for three years immediately prior to the date of your application, which has not been revoked, suspended, cancelled or disqualified;

Affirm under penalty of perjury that you have not made a false statement or knowingly concealed a material fact in any application for a permit;

You have not been convicted of two or more serious traffic violations within the previous twelve-month period of the date of your application;

You have not been convicted of reckless driving, DUI or reckless homicide resulting while operating a motor vehicle within three years of the date of your application;

Submit to and successfully pass both an Illinois specific and FBI criminal background check. Fingerprint results are valid for one year;

You have not been repeatedly involved as a driver in motor vehicle accidents or repeatedly convicted of offenses, which indicates disrespect for traffic laws;

You have not caused a fatal accident as the result of the unlawful operation of a motor vehicle; and

Within the last five years, you have not been found to be afflicted with or suffering from any mental disability or disease.

Iowa: According to Dave Stutz at Iowa DOT, an APNP cannot submit medical forms to Iowa DOT, only an MD or DO (a physician) may complete and submit Iowa DOT medical forms. In Iowa, an applicant must answer a yes or no health impairment question on renewal. If they have an obvious amputation with an unrestricted license they will be asked if they have road tested before since the amputation. If they say no, they are given the option of a road test or waiting on a DMV record check (apparently paper files). It is a counter staff decision. See multiple responses...Iowa does NOT maintain a felonies list of disqualifiers per Max Christensen, Iowa Department of Education.

From Dave Stutz, Iowa DOT re: S endorsement:

- b. Be physically and mentally competent.
 - c. Not possess personal or moral habits which would be detrimental to the best interests of the safety and welfare of the children transported.
 - d. Possess a current certificate of qualification for operation of a commercial motor vehicle issued by a physician licensed pursuant to chapter 148 or 150A, physician's assistant, advanced registered nurse practitioner, or chiropractor or any other person identified by federal and state law as authorized to perform physical examinations.
2. Any of the following shall constitute grounds for a school bus driver's immediate suspension from duties, pending a termination hearing by the board of directors of a public school district or the authorities in charge in a nonpublic school if the bus driver is under contract, pending confirmation of the grounds by the school district or accredited nonpublic school if the bus driver is a part-time or substitute bus driver who is not under contract, or pending confirmation of the grounds by the employer of the school bus driver if the employer is not a school district or accredited nonpublic school by the board:
- a. Use of nonprescription controlled substances or alcoholic beverages during working hours.
 - b. Operating a school bus while under the influence of nonprescription controlled substances or alcoholic beverages.
 - c. Fraud in the procurement or renewal of a school bus driver's authorization to operate a school bus.
 - d. The commission of or conviction for a public offense as defined by the Iowa criminal code, if the offense is relevant to and affects driving ability, or if the offense includes sexual involvement with a minor student with the intent to commit acts and practices proscribed under sections 709.2 through 709.4, section 709.8, and sections 725.1 through 725.3, or is a violation of the rules of the department of education adopted to implement section 280.17.
 - e. A change in circumstances indicating that the driver is no longer physically or mentally competent. Failing to maintain or falsifying the required reports.

From Max Christensen, Executive Officer Iowa Dept of Education

IAC 43.24 refers to both IAC 43.12 and IC 321.375(2). All three are enclosed below:

281-43.24(321) Authorization denials and revocations. A person who believes that a school bus driver who holds an authorization issued by the department of education or who seeks a school bus authorization has committed acts in violation of Iowa Code subsection 321.375(2) or rule 43.12(285) may file a complaint with the department against the driver or applicant. The department shall notify the driver or applicant that a complaint has been filed and shall provide the driver or applicant with a copy of the complaint. A hearing shall be set for the purpose of determining whether the bus driver's authorization shall be denied or revoked. Hearing

procedures in 281-Chapter 6 shall be applicable to authorization revocation or denial proceedings.

281-43.12(285) Driver qualifications. General character and emotional stability are qualities which must be given careful consideration by boards of education in the selection of school bus drivers. Elements that should be considered in setting a character standard are:

1. Reliability or dependability.
2. Initiative, self-reliance, and leadership.
3. Ability to get along with others.
4. Freedom from use of undesirable language.
5. Personal habits of cleanliness.
6. Moral conduct above reproach.
7. Honesty.
8. Freedom from addiction to narcotics or habit-forming drugs.
9. Freedom from addiction to alcoholic beverages or liquors.

281-43.13(285) Stability factors. Factors to be considered in determining emotional stability are:

- 43.13 (1) Patience.
- 43.13 (2) Considerateness.
- 43.13 (3) Even temperament.
- 43.13 (4) Calmness under stress.

281-43.14(285) Driver age. School bus drivers must be at least 18 years of age on or before August 1 preceding the opening of the school year for which a school bus driver's authorization is required.

281-43.15(285) Physical fitness. Except for insulin-dependent diabetics, an applicant for a school bus driver's authorization must undergo a biennial physical examination by a licensed physician or surgeon, osteopathic physician or surgeon, osteopath, qualified doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner. The applicant must submit annually to the applicant's employer the signed medical examiner's certificate (pursuant to Federal Motor Carrier Safety Administration regulations 49 CFR Sections 391.41 to 391.49), indicating, among other requirements, sufficient physical capacity to operate the bus effectively and to render assistance to the passengers in case of illness or injury, and freedom from any communicable disease, such as tuberculosis. At the discretion of the chief administrator or designee of the employer or prospective employer, the chief administrator or designee shall evaluate the applicant's ability in operating a school bus, including all safety equipment, in providing assistance to passengers in evacuation of the school bus, and in performing other duties required of a school bus driver.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: This rule is promulgated in response to legislation and does not rest on factual data or analytical methodologies.

Analysis and supporting documentation used to determine effect on small businesses: This proposed rule does not directly affect small businesses, as defined under s. 227.114 (1), Stats. Accordingly, the Department is exempt from performing an analysis of the affect on small businesses by operation of s. 227.114 (8) (b), Stats.

Effect on small business: The proposed rule may affect small businesses indirectly, but will not have a significant economic impact on a substantial number of small businesses. The rule may have a favorable effect on some small businesses by enlarging the categories of persons eligible to

submit medical reports to the Department. The Department's Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect of the rule and anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or liabilities or on the private sector.

Agency contact person and place where comments are to be submitted and deadline for submission: The public

record on this proposed rule making will be held open until close of business the day of the hearing, to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Jill Reeve, Department of Transportation, Bureau of Driver Services, Room 806, P. O. Box 7918, Madison, WI 53707-7918. You may also contact Jill Reeve by phone at (608) 264-7393.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Submittal of proposed rules to the legislature

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

Chiropractic Examining Board

(CR 06–051)

Chs. Chir 4, 5, 6, and 12, relating to nutritional counseling certification.

Employment Relations Commission

(CR 06–061)

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

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

(CR 06–054)

Ch. MPSW 11, relating to required examinations for licensure as a professional counselor.

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

(CR 06–055)

Ch. MPSW 13, relating to psychotherapeutic counseling by professional counselors.

Natural Resources

(CR 05–105)

Ch. NR 102, relating to designation of waters as outstanding or exceptional resource waters.

Regulation and Licensing

(CR 06–033)

Chs. RL 80 to 87, relating to definitions, experience, educational courses, continuing education, conduct and renewal for real estate appraisers.

Rule orders filed with the revisor of statutes bureau

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

Agriculture, Trade and Consumer Protection (CR 06-009)

An order affecting chs. ATCP 10, 11 and 12, relating to animal diseases and movement.
Effective 11-1-06.

Health and Family Services (CR 06-021)

An order affecting ch. HFS 157, relating to protecting public health by regulating the sources and use of ionizing radiation.
Effective 10-1-06.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (CR 05-098)

An order affecting ch. MPSW 3, relating to human services internship requirements for a social worker training certificate.
Effective 10-1-06.

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

An order affecting ch. MPSW 14, relating to continuing education credits for professional counselors.
Effective 10-1-06.

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

An order affecting ch. MPSW 8, relating to continuing education credits for social workers.
Effective 10-1-06.

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

An order affecting ch. MPSW 19, relating to continuing education credits for marriage and family therapists.
Effective 10-1-06.

Transportation (CR 06-048)

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.
Effective 10-1-06.

Rules published with this register and final regulatory flexibility analyses

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

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

Commerce (CR 05-081)

An order affecting ch. Comm 48, relating to petroleum products. Effective 9-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed changes for ch. Comm 48, consist primarily of updating it to be consistent with corresponding changes that are being developed for chapters Comm 10 and 14 and with several recently updated national standards for petroleum products and fuel ethanol. The proposed changes also include several clarifications and refinements relating to administration and enforcement by the department's inspectors.

Chapter 168 of the statutes requires that petroleum products meet minimum product-grade specifications as prescribed by rule by the department; and that the department's inspections be conducted, so far as applicable, in accordance with the latest standards produced by ASTM International. Those statutory provisions do not exempt small businesses from these grade specifications or inspection requirements.

Updating ch. Comm 48 to make it consistent with current national standards for petroleum products and fuel ethanol and inclusion of the clarifications and refinements relating to administration and enforcement, are expected to simplify compliance efforts for both small and large businesses.

No issues were raised by small businesses during the public hearing or legislative review stages of promulgating these changes to ch. Comm 48.

Summary of Comments by Legislative Review Committees

No comments were received, although a hearing was held on May 24, 2006, by the Assembly Committee on Natural Resources.

Dentistry Examining Board (CR 04-095)

An order affecting ch. DE 11, relating to anesthesia administration. Effective 1-1-07.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Health and Family Services (CR 05-033)

An order affecting chs. HFS 105 to 107, relating to Medicaid reimbursement for dental services. Effective 9-1-06.

Summary of Final Regulatory Flexibility Analysis

The department believes that the proposed rules will have a positive effect on dental hygienists and dentists. Dental hygienists will enjoy increased opportunities to independently contract their services. Dentists will experience a reduction in paperwork and administrative staff time associated with participation in Wisconsin Medicaid and BadgerCare. The proposed rules do not impose reporting requirements or schedules.

Summary of Comments by Legislative Review Committees

The Assembly Committee on State Affairs (Committee) requested modifications to the proposed rules. When the department refused the requested modifications, the Committee objected to the proposed rule in part. The Joint Committee for Review of Administrative Rules (JCRAR) concurred in the Committee's objection and requested modifications. The department agreed to modifications in part. JCRAR objected to the proposed rule in part.

Natural Resources (CR 06-013)

An order affecting ch. NR 10, relating to deer hunting as it relates to the control and eradication of chronic wasting disease. Effective 9-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. The Assembly Committee on Natural Resources held a public hearing on May 24, 2006. The Senate Committee on Natural Resources and Transportation held a public hearing on June 27, 2006. No requests for modifications were received by the department.

**Transportation
(CR 06-036)**

An order affecting ch. Trans 510, relating to the Transportation Facilities Economic Assistance and Development (TEA) Program. Effective 9-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rule changes will make TEA more available to small business: (1) Loans to communities will reduce local transportation infrastructure improvement costs helping small businesses to proceed with their expansion plans; (2) changing funding cycles from quarterly to a year round first-come, first-serve basis; (3) correcting program contacts due to recent reorganizations; (4) eliminating program inconsistencies that both prohibit and allow grant ceiling adjustments; and (5) requiring ethanol plant constructions to be competitively bid in order to be eligible for TEA.

**Summary of Comments by Legislative Review
Committees**

No comments were received.

**Transportation
(CR 06-041)**

An order affecting ch. Trans 103, relating to habitual traffic offenders. Effective 9-1-06.

Summary of Final Regulatory Flexibility Analysis

This rule making will have no effect upon small businesses, except to the extent that it permits some employees to reinstate driver licenses.

**Summary of Comments by Legislative Review
Committees**

No comments were received.

Sections affected by rule revisions and corrections

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

Revisions

Commerce

Ch. Comm 48 (chapter)

Dentistry Examining Board

Ch. DE 11 (chapter)

Health and Family Services

Ch. HFS 105

S. HFS 105.01 (5) (a) and (5m)

S. HFS 105.06

Ch. HFS 106

S. HFS 106.02 (12)

Ch. HFS 107

S. HFS 107.07 (1), (2) (a) to (c), (3), (4) and (4m)

Natural Resources

Ch. NR 10

S. NR 10.01 (3) (et)

S. NR 10.104 (11) (b)

S. NR 10.105 (2)

S. NR 10.106 (2) (g)

Transportation

Ch. Trans 103

S. Trans 103.02 (4) and (5)

S. Trans 103.10

Ch. Trans 510

S. Trans 510.03 (1) and (2)

S. Trans 510.04 (2) (f)

S. Trans 510.06 (1)

S. Trans 510.07 (2) and (3)

S. Trans 510.09 (3) (e)

Editorial corrections

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

Dentistry Examining Board

Ch. DE 3

S. DE 3.01

Ch. DE 4

S. DE 4.01 (2) (b)

Health and Family Services

Ch. HFS 107

S. HFS 107.08 (2) (d)

Sections affected by revisor's corrections not published

Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
ATCP 34.02 (13)	NR 600.03 (107) ch. NR 605 NR 605.05	NR 661.04 (2) (a) ch. NR 661 NR 661.04
ATCP 34.02 (18) and 34.14 (1) (c)	NR 610.07	NR 662.220
Comm 7.45 (1) (b)	ch. NR 590	ch. NR 679
DOC 314.05 (2) (c)	ch. 880	ch. 54
DFI-SB 17.01 (2)	880.61 to 880.72	54.854 to 54.898
DFI-SB 17.01 (5)	ch. 880	ch. 54
DFI-SL 17.01 (2)	880.61 to 880.71	54.854 to 54.894
DFI-SL 17.01 (5)	ch. 880	ch. 54
HFS 1.05 (10) (d), 1.06 (2) (d) 5.	ch. 880	ch. 54
HFS 34.02 (9)	ch. 880	ch. 54
HFS 36.03 (13) (a)	880.01 (3)	54.01 (10)
HFS 36.03 (20)	767.51	767.89
HFS 40.03 (9)	ch. 880	ch. 54
HFS 40.03 (17)	767.51	767.89
HFS 52.03 (7)	ch. 880	ch. 54
HFS 61.46 (2)	ch. 880	ch. 54
HFS 68.02 (11)	767.26	767.56
HFS 73.07 (2) (a) 1.	880.33 880.33	ch. 54, Stats., or s. 880.33, 2003 stats. ch. 54, Stats.
HFS 83.04 (31), 83.21 (1) (a) and (4) (t)	ch. 880	ch. 54
HFS 83.11 (3) (f)	880.07	54.34
HFS 83.06 (5) (a) to (c), 83.20 (2) (a) 2., 83.33 (3) (b) 1. and (d) 1.	880.33	ch. 54, Stats., or s. 880.33, 2003 stats.
HFS 85.01	880.35	54.15 (7)
HFS 85.02 (5)	880.37	Delete reference
HFS 85.02 (7)	880.36	54.52
HFS 85.03 (11)	880.38 (1) and (2)	54.25 (1) (b)
HFS 85.03 (13)	880.38 (3)	54.25 (1) (a)

Location of invalid cross-reference	Invalid cross-reference	Correction
HFS 85.22 (8)	880.15	54.50
HFS 88.04 (2) (e) 1.	880.33	ch. 54
HFS 88.04 (2) (e) 2., 88.10 (1) and (3) (d)	ch. 880	ch. 54
HFS 89.29 (1) (a), (2) (b) 2. and (3) (a) 4.	ch. 880	ch. 54
HFS 90.13 (1) (a) 3.	ch. 880	ch. 54
HFS 92.03 (3) (a)	880.15	54.50
HFS 92.04 (15) (intro.) and (b)	51.30 (4) (b) 13.	51.30 (4) (cm)
HFS 94.09 (4)	ch. 880	ch. 54
HFS 101.03 (114p) (d)	767.60	767.803
HFS 119.01	149.12 (3) (c), 149.144, 149.46 (2) (b) (intro.), 149.15 (5) and 149.17 (4)	Delete references
HFS 119.07 (1) and (6) (a)	149.146	Delete reference
HFS 119.07 (6m) (e)	149.14 (5) (a) to (c), and 149.146 (2) (am) 1. to 3.	149.14 (5)
HFS 119.10 (1)	ch. 880	ch. 54
HFS 132.31 (2)	ch. 880	ch. 54
HFS 133.02 (5m) (a)	880.01 (3)	54.01 (10)
HFS 134.12 (2) and 134.31 (2) (a)	ch. 880	ch. 54
HFS 145.06 (2) (d) 4.	ch. 880	ch. 54
HFS 163.03 (51)	NR 605.04 NR 605.05	NR 661.03 NR 661.04
HFS 163.14 (1) (k) 3., 163.44 (1) (g) 3.	chs. NR 600 to 690	chs. NR 660 to 679
HFS 175.13 (2) (c)	chs. NR 600 to 685	chs. NR 660 to 670
HFS 253.03 (2) (e)	767.29	767.57
Ins 3.53 (4) (b) 2.	ch. 880	ch. 54
NR 113.02 (3), 113.03 (29) and 113.06 (2) (b)	chs. NR 600 to 685	chs. NR 660 to 670
NR 140.22 (3) (d) Table 4	NR 635.16 NR 635.05 to 635.15	NR 665.0090 to 665.0094 NR 664.0090 to 664.0100
NR 149.14 (6)	NR 630.13	NR 664.0013
NR 149.42 (2) (b)	ch. NR 605 or 630	ch. NR 662 or 664
NR 157.03 (2) (b) and (d), 157.04 (1), 157.05 (1)	chs. NR 620 and 680	ch. NR 663
NR 157.07 (2) (a)	chs. NR 600 to 690	chs. NR 660 to 679
NR 157.07 (3)	chs. NR 630, 660 and 680 NR 660.14	chs. NR 664, 665 and 670 NR 670.403
NR 182.02 (2) and (4)	chs. NR 600 to 685	chs. NR 660 to 670

Location of invalid cross-reference	Invalid cross-reference	Correction
NR 187.04 (3)	chs. NR 600 to 685	chs. NR 660 to 670
NR 204.02 (1) (b) 1.	ch. NR 600	ch. NR 660
NR 205.07 (3) (a)	chs. NR 600 to 685	chs. NR 660 to 670
NR 206.02 (2) (e)	chs. NR 600 to 685	chs. NR 660 to 670
NR 211.10 (2) (a)	NR 605.08 (2)	NR 661.21
NR 211.17 (1) (a) and (8)	ch. NR 605	ch. NR 661
NR 211.17 (1) (b)	NR 605.09 (1) (d) or (3) (b), Table IV	NR 661.30 (4) or 661.33 (5)
NR 214.03 (18)	NR 600.03 (98)	NR 660.10 (52)
NR 214.04 (2)	ch. NR 665	NR 664.0270
NR 324.11 (1) (c)	ch. NR 605	ch. NR 661
NR 347.03 (16)	ch. NR 605	ch. NR 661
NR 347.04 (1) (g)	chs. NR 600 to 685	chs. NR 660 to 670
NR 406.04 (1) (a) and (b)	ch. NR 605 ch. NR 680	ch. NR 661 ch. NR 670
NR 407.03 (1) (a) and (b)	ch. NR 605 ch. NR 680	ch. NR 661 ch. NR 670
NR 422.095 (6) (b)	ch. NR 680	ch. NR 670
NR 500.02 (1), 500.03 (109)	chs. NR 600 to 690	chs. NR 660 to 679
NR 500.03 (100)	NR 600.03 (98)	NR 660.10 (52)
NR 502.02 (1), 502.13 (6) (i) and (k)	chs. NR 600 to 690	chs. NR 660 to 679
NR 502.05 (3) (e), 502.07 (2m), 502.08 (2) (c), 502.09 (2) (d)	ch. NR 590	ch. NR 679
NR 502.09 (6) (a)	NR 605.08 (5)	NR 661.24
NR 502.13 (9) (c)	NR 600.03 (87)	NR 660.10 (52)
NR 503.02 (1)	chs. NR 600 to 690	chs. NR 660 to 679
NR 504.02 (1)	chs. NR 600 to 690	chs. NR 660 to 679
NR 506.02 (1), 506.15 (2) (c)	chs. NR 600 to 690	chs. NR 660 to 679
NR 506.155	NR 610.07	NR 662.220
NR 507.02 (1)	chs. NR 600 to 690	chs. NR 660 to 679
NR 508.02 (1)	chs. NR 600 to 690	chs. NR 660 to 679
NR 509.02 (2) (c)	chs. NR 600 to 690	chs. NR 660 to 679
NR 510.02 (1)	chs. NR 600 to 690	chs. NR 660 to 679
NR 512.02 (1)	chs. NR 600 to 690	chs. NR 660 to 679
NR 514.02 (1)	chs. NR 600 to 690	chs. NR 660 to 679
NR 516.02 (1)	chs. NR 600 to 690	chs. NR 660 to 679

Location of invalid cross-reference	Invalid cross-reference	Correction
NR 518.02 (1)	chs. NR 600 to 690	chs. NR 660 to 679
NR 520.02 (1)	chs. NR 600 to 690	chs. NR 660 to 679
NR 524.02 (1)	chs. NR 600 to 685	chs. NR 660 to 670
NR 526.02 (3), 526.05 (3), 526.055 (1) (c)	chs. NR 600 to 685	chs. NR 660 to 670
NR 526.09 (2) (d)	ch. NR 630	chs. NR 664 and 670
NR 526.10 (2) (f)	ch. NR 620	ch. NR 663
NR 526.19 (2) (b)	NR 615.09	NR 662.041 (3) (e) and (f)
NR 668.49 (5) (b)	chs. NR 600 to 673	chs. NR 660 to 673
NR 700.02 (3) (b)	ch. NR 685 NR 635.17	subchs. G and H of ch. NR 664 NR 664.0101
NR 720.02 (1) (b), 720.03 (12) (c), 720.05 (1) (c)	ch. NR 685 NR 635.17	subchs. G and H of ch. NR 664 NR 664.0101
NR 718.02 (1) (a) 2., (b) 2., and 718.03 (5)	NR 600.03 (87)	NR 660.10 (52)
NR 718.09 (8) (b) 2. c.	ch. NR 600	ch. NR 660
NR 720.02 (1) (b)	ch. NR 685	subchs. G and H of ch. NR 664
NR 812.07 (56)	chs. NR 600 to 685	chs. NR 660 to 670
NR 815.06 (4)	NR 600.04 (2)	NR 665.0430 (2)
PI 19.04 (2) (b) 4.	767.45	767.80
RL 10.01 (3), (4) and (5)	449.17 (4)	449.17 (1m) (b)
Tax 11.98 (title)	77.62 (1)	77.62
Trans 102.21 (1) (e)	767.60	767.803
Trans 105.02 (1)	343.63 (1), (2) and (3)	343.62 (4) (a) 1., 2. and 3.
Trans 105.02 (2)	343.63 (4)	343.62 (4) (a) 4.
Trans 105.035 (1)	343.64 (1) (d)	343.61
Trans 105.05 (3)	343.71 (2)	343.71 (1m) (a)
Trans 105.05 (4)	343.71 (3)	343.71 (1m) (b)
Trans 105.06 (2) (intro.)	343.72 (5)	343.61 (4) (b)
Trans 129.20 (3) (c)	343.64	343.61
Trans 129.20 (4) (b)	343.63 (1) and (2)	343.62 (4) (a) 1. and 2.
Trans 129.20 (4) (c)	343.63 (3) and (5) (twice)	343.62 (4) (a) 3. and 5. (twice)
Trans 129.20 (4) (d)	343.65 and 343.67	343.62
Trans 310.04 (1)	347.48 (2m) (c) and (4) (a) 1.	347.48 (2m) (c) and (4) (am)
Trans 310.04 (2)	347.48 (2m) (c) and (4) (a) 2.	347.48 (2m) (c) and (4) (as)
DWD 15.03 (3) (c)	767.458, 767.48, 767.62	767.863, 767.84, 767.805
DWD 40.01 (1)	767.02, 767.08, 767.10, 767.23, 767.25, 767.32 and 767.51	767.225, 767.34, 767.501, 767.511, 767.59, and 767.89

Location of invalid cross-reference	Invalid cross-reference	Correction
DWD 40.01 (2)	767.02 767.10 767.32	ch. 767 767.34 767.59
DWD 40.01 (3)	767.32	767.59
DWD 40.02 (11)	767.25 767.26 767.261	767.511 767.56 767.531
DWD 40.02 (13) (b)	767.265	767.75
DWD 40.03 (6)	767.26	767.56
DWD 40.03 (7)	767.261	767.531
DWD 40.03 (8)	767.10 (2) (am) 1. to 3.	767.34 (2) (am) 1. to 3.
DWD 40.03 (11) (a)	767.25 (1m)	767.511 (1m)
DWD 40.03 (11) (b)	767.25 (1n)	767.511 (1n)
DWD 40.03 (17)	767.51	767.89
DWD 41.02 (1) and (2)	767.45 (6) (a)	767.80 (6) (a)
DWD 43.01	767.027	767.70 (2)
DWD 43.04 (2)	767.263 (2)	767.58 (2)
DWD 43.06 (4) and (5) (d)	767.30	767.77
DWD 43.06 (5) (c)	767.25 (6)	767.511 (6)
DWD 43.10 (5) (b)	767.265 (3h)	767.76 (3h)
DWD 43.11 (2) (c) and (6) (a)	767.30 (1)	767.77 (1)
DWD 43.11 (10) (a) 2.	767.25 767.51	767.89 767.511
DWD 43.11 (10) (c)	767.265 (1)	767.75 (1) (b)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 161. Relating to the Governor's Healthy Wisconsin Initiative.

Executive Order 162. Relating to a proclamation declaring a state of emergency relating to drought conditions.

Executive Order 163. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Sergeant Travis Van Zoest of the Army National Guard who lost his life during Operation Enduring Freedom.

Executive Order 164. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Corporal Stephen Castner of the Wisconsin Army National Guard who lost his life during Operation Iraqi Freedom.

Executive Order 165. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Sergeant Ryan Jopek of the Wisconsin Army National Guard who lost his life during Operation Iraqi Freedom.

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



First Class Mail

Dated Material. Please Do Not Delay!